

**CONCESSION AGREEMENT FOR FOOD AND
BEVERAGE AT THE ELKO REGIONAL AIRPORT**

This Concession Agreement (“Agreement”) made and entered into this ___ day of _____, 201__ (hereinafter the “Effective Date”) by and between the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada (“City”), and _____, a _____ organized under the laws of the State of _____, (“Concessionaire”).

W I T N E S S E T H

WHEREAS, the City owns and operates Elko Regional Airport, located in Elko, Nevada (“Airport”); and

WHEREAS, the City has selected Concessionaire as the most qualified to provide the service contemplated by this Agreement;

NOW THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, the City and Concessionaire hereby mutually undertake, promise and agree, each for itself, and its successors and assigns, as follows:

ARTICLE 1

DEFINITIONS

1.01 “Airport” means the Elko Regional Airport located in Elko, Nevada.

1.02 “Airport Concession Disadvantaged Business Enterprise” or “ACDBE” has the meaning set forth in Title 49, Part 23 of the Code of Federal Regulations, as now enacted, or hereafter amended or any successor regulation specifically enacted to replace Title 49, Part 23.

1.03 “Airport Terminal,” “Terminal” and “Terminal Building” mean the existing airline passenger terminal building at the Airport.

1.04 “Annual Gross Revenues” means the total Gross Revenues of Concessionaire for each Contract Year.

1.05 “Assigned Area” is the area in the Airport Terminal designated by this Agreement and indicated on the exhibit attached hereto at **Exhibit B** (Food and Beverage Concession Location Map) and made a part hereof, consisting of approximately 1,074 square feet, which is the location where the business of Concessionaire may be conducted.

1.06 “Auditor” means the City’s Auditor and/or any person acting on behalf of the Auditor who has been approved by the City to perform that function.

1.07 “Concession Equipment” means the personal property listed on **Exhibit C** which is owned by the City and is provided to Concessionaire for use in connection with the Concessionaire’s business operation in the Assigned Area.

1.08 “Contract Year” means the twelve (12) month period beginning on the Effective Date and each twelve (12) month period thereafter, until the termination of this Agreement.

1.09 “Director” or “Airport Director” means the Director of the Airport and includes any person as may, from time-to-time, be authorized in writing by the Director to act in his or her behalf.

1.10 “FAA” means the Federal Aviation Administration.

1.11 “Gross Revenues,” and “Gross Revenues of Concessionaire,” means the aggregate of all charges or other fees charged by Concessionaire on all sales made by Concessionaire of food and beverages, including alcoholic beverages, and all other items and revenues of every kind and character derived from, arising out of or payable on account of the business conducted by Concessionaire at the Airport or from the operations of Concessionaire under this Agreement, whether for cash or credit, without any deduction for credit card discounts or credit card services, whether the same shall be paid or unpaid, except as otherwise provided herein. “Gross Revenues” shall not include: (1) sales tax collection allowance paid the State of Nevada to Concessionaire as compensation for the keeping of prescribed records and the proper accounting and remittance of state sales tax; (2) any charges on a reimbursement basis, as mutually agreed upon by the City and Concessionaire; (3) any refunds made by Concessionaire to customers, because of unacceptable or unsatisfactory goods or services; (4) any taxes imposed by law which are separately stated to and paid by the customer and directly payable by Concessionaire to a taxing the City; (5) tips and gratuities, and free or compensatory meals for employees of Concessionaire; (6) fees and payments received by Concessionaire from sublicensees, subcontractors, or sublessees, (7) rebates and volume discounts from manufacturers or distributors; and (8) proceeds from the sale of used equipment by Concessionaire.

1.12 “Improvement(s)” or “improvement(s)” means all structures, furnishings, displays, equipment, trade fixtures, and all other fixtures that are or become permanently installed or affixed at the Assigned Area, together with all additions, alterations, repairs, and modifications thereto. Any structure, furnishing, display, equipment, trade fixture, fixture, or any other improvement that is nailed, bolted, stapled, or otherwise permanently affixed to any Assigned Area is considered permanently installed or affixed and is included within the definition of Improvement. The term “Improvements” shall not include “Personalty” as defined herein.

1.13 “Monthly Gross Revenues” means the aggregate amount of all Gross Revenues of Concessionaire during any month.

1.14 “Percentage Fee” is an aggregate of the amounts that are derived as a percentage of Gross Revenues paid to the City in consideration for the rights and privileges granted by this Agreement.

1.15 “Personalty” means all furniture, furnishings, trade fixtures, and equipment of Concessionaire, located in the Assigned Area, but not permanently affixed thereto.

1.16 “Term” of this Agreement or words of similar import shall mean the term set forth in Article 2, hereof.

1.17 “TSA” means the United States Transportation Security Administration.

ARTICLE 2

EFFECTIVE DATE AND TERM

2.01 Effective Date. This Agreement shall become effective on the date first above indicated.

2.02 Term. This Agreement shall be for a term commencing on the Effective Date and terminating at midnight on the __ day of _____, 20____ (“Term”). Notwithstanding any other provision contained in this Agreement, Concessionaire may terminate this Agreement upon giving ninety (90) days’ prior written notice to the City.

ARTICLE 3

PRIVILEGES AND ASSIGNED AREA

3.01 Description of Specific Privileges, Uses and Rights. The City hereby grants to Concessionaire the following non-exclusive specific privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants set forth in this Agreement. Concessionaire shall operate from the Assigned Area.

a. Concessionaire shall have the non-exclusive right, privilege and obligation to sell in the Airport Terminal for on-Airport consumption and operate a food and beverage services within the Airport Terminal including, but not limited to: seated dining, coffee facilities, concession stands and bars, and snack bars. All of such sales may only be conducted from the Assigned Area according to the terms and conditions of this Agreement. Concessionaire shall have no sublicensee, subcontractor or subtenant operators of any food or beverage services provided hereunder without the prior written consent of the City. Concessionaire shall be the holder of any franchises that are required in connection with any of the food and beverage services provided hereunder.

b. The rights granted herein are non-exclusive and the City may, at any time,

grant to other parties (via lease, license, or other types of agreements) the same or similar rights as those granted herein.

c. Concessionaire expressly agrees to prevent any use of the Assigned Area which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.

3.02 Description of General Privileges, Uses and Rights. In addition to the privileges granted in Article 3.01 of this Agreement, the City hereby grants to Concessionaire:

a. The non-exclusive use of the Public Areas within the Terminal for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service and agents in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of the City. The City shall have the full right and the City to make all rules and regulations as the City may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas.

b. For so long as Concessionaire is not in default hereunder, Concessionaire shall and may peacefully and quietly have, hold, and enjoy the Assigned Area, solely for the purposes provided hereunder during the Term of this Agreement, and subject to the terms and provisions of this Agreement.

c. The non-exclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service and agents in connection with its operations hereunder.

d. Nothing herein contained shall be construed to grant Concessionaire, its employees, contractors, patrons, invitees, suppliers of service or agents the right to use or occupy any space or area at the Airport, improved or unimproved, that is leased or assigned to a third party. The rights granted hereunder are expressly limited to the operation and management of a food and beverage concession. Concessionaire covenants and agrees that the Assigned Area shall be used solely for the uses expressly permitted by this Agreement and for no other purposes whatsoever. Concessionaire acknowledges and agrees that Concessionaire shall not have the exclusive right to conduct a food and beverage concession at the Airport and the City may arrange with others for similar activities at the Airport. Failure of Concessionaire to use the Assigned Area for purposes specifically set forth in this Agreement shall constitute an Event of Default under this Agreement.

3.03 As-Is Condition of Assigned Area. The City makes no representations or warranties whatsoever as to: (i) the condition of the Assigned Area or any improvements or personal property in the Assigned Area, including without limitation the Concession Equipment and all improvements currently installed at such locations and all future improvements to be

installed thereto, or (ii) whether the Assigned Area or any improvements or personal property in the Assigned Area, are in compliance with applicable federal, state, county and local laws, ordinances, rules, or regulations, or (iii) the fitness of the Assigned Area or any improvements or personal property in the Assigned Area, for any particular purpose. Concessionaire specifically obligates itself to conduct its own due diligence investigation as to the suitability of the Assigned Area and any such improvements and personal property (including, without limitation, Concession Equipment) for Concessionaire's purposes. The Assigned Area and all improvements and personal property therein are provided for Concessionaire's use in "AS IS CONDITION" and "WITH ALL FAULTS." The Concessionaire shall not be entitled to any adjustment of any Percentage Fees or other payments hereunder on account of the condition of the Assigned Area or of any improvements or any failure of any improvements or personal property to be in working order or because of any necessity of Concessionaire to repair or take corrective actions with respect to the Assigned Area or of any improvements or personal property because of the inability of obtaining or any delay in obtaining any required approvals from any governmental body having jurisdiction. Furthermore, the Concessionaire hereby releases the City of any and all claims and liabilities whatsoever on account of the condition of the Assigned Area and any improvements and personal property or any failure to be in working order or because of any necessity of Concessionaire to repair or take corrective actions with respect thereto, or the necessity for obtaining any approvals from any governmental body.

3.04 Assigned Area. Subject to the provisions hereof, the City shall make available to Concessionaire Assigned Area, which is depicted on **Exhibit A**, in an AS-IS condition, except for existing movable items which will be removed by the City prior to the Effective Date of this Agreement. All Personality required by the Concessionaire in addition to the Concession Equipment shall be provided by Concessionaire at its sole cost and expense.

3.05 Concession Equipment. Concessionaire shall have the right to use the Concession Equipment listed at **Exhibit C** to this Agreement for the purpose of operating its business in the Assigned Area in accordance with the terms and conditions of this Agreement, *provided*, in no event shall Concessionaire remove any Concession Equipment from the Elko Regional Airport without the written consent of the City; *further provided*, in the event Concessionaire should damage or destroy any Concession Equipment listed at **Exhibit C**, Concessionaire shall immediately upon written demand from the City pay to the City the full replacement value or the cost to repair the Concession Equipment, at the option of the City. The failure of Concessionaire to fulfill the terms of the preceding sentence within thirty (30) days of written demand from the City shall constitute an Event of Default.

ARTICLE 4
REPRESENTATIONS, WARRANTIES
AND AGREEMENTS OF CONCESSIONAIRE

Concessionaire represents, warrants and agrees that, as of the date of this Agreement (a)

Concessionaire has the form of business organization indicated, and is and will remain duly organized and existing in good standing under the laws of the State of Nevada, and is duly qualified to do business wherever necessary to perform its obligations under the Agreement; (b) the Agreement (1) has been duly authorized by all necessary action consistent with Concessionaire’s form of organization, (2) has been or will be executed by an individual that has been duly authorized to do so, (3) does not require the approval of, or giving notice to, any governmental authority; (4) does not contravene or constitute a default under any applicable law, Concessionaire’s organizational documents, or any agreement, indenture, or other instrument to which Concessionaire is a party or by which it may be bound, and (5) constitutes legal, valid and binding obligations of Concessionaire enforceable against Concessionaire in accordance with the terms thereof; (c) there are no pending actions or proceedings to which Concessionaire is a party, and there are no other pending actions or proceedings of which Concessionaire has knowledge which, either individually or in the aggregate, would have a Material Adverse Effect. “Material Adverse Effect” shall mean a material impairment of the ability of Concessionaire to perform its obligations under or remain in compliance with this Agreement; (d) the Personalty is personal property and when subjected to use by Concessionaire will not be or become a fixture(s) under Nevada law; and (e) Concessionaire possesses or is licensed under all patents, trademarks, trade names or copyrights necessary for conducting business in the Assigned Area.

ARTICLE 5

**DEPOSIT, PERCENTAGE FEES,
CHARGES AND ACCOUNTABILITY**

5.01 Deposit. Concessionaire shall pay to the City, coincidentally with the execution hereof, a security deposit in the amount of **One Thousand and 00/100 (\$1,000.00)**. The City may claim of the security deposit such amounts as are reasonably necessary to remedy any default of the Concessionaire in the payment of Percentage Fees, to repair damages to the Assigned Area caused by the Concessionaire other than normal wear, to pay the reasonable costs of cleaning the Assigned Area and/or to compensate the City for any other breach of this Agreement by Concessionaire which results in pecuniary harm to the City. If all or any portion of such deposit is not required for the reasons set forth above, upon termination of this Agreement, the deposit or any unused portion shall be refunded to Concessionaire.

5.02 Percentage Fees. The Percentage Fees shall be calculated by multiplying Concessionaire's Gross Revenues, commencing on the Commencement Date, by the corresponding percentages as shown in the following table:

Gross Revenues	Percentage
\$0 to \$5,000.00	5%
\$5,001.00 to \$10,000.00	7 ½ %
\$10,000.00 and more	10%

5.03 Payment of Percentage Fees. Percentage Fees shall be due and payable within twenty (20) days after the beginning of each and every month throughout the Term of this Agreement.

5.04 Payment of Utilities. The City shall provide basic levels of water, sewer, lighting and electricity, Internet service, heating and air condition in the Terminal Area, to include the Assigned Area. Concessionaire shall obtain and pay for all other utilities consumed within the Assigned Area, to include enhanced or increased amounts of utilities over that which is supplied by the City; *provided*, Concessionaire shall first obtain the written consent of the City; *further provided*, where required by the City, Concessionaire shall maintain a separate utility meter.

5.05 Monthly Gross Revenue Report. Upon request by the City, Concessionaire shall deliver a report of Gross Revenues for the preceding month on a form supplied by the City to the City, which shall include separate totals for food products, beverages, and other items as required by the City.

5.06 Reports Property of the City. Any and all reports and other data and documents provided to the City by Concessionaire in connection with this Agreement are and shall remain the property of the City.

5.07 Cash Registers Standards. Concessionaire shall ensure that all locations have cash registers with tamper-proof cumulative totals and daily totals by category including separate totals for categories of "products," "credit card," "cash," "other" and "sales tax." All registers shall maintain records of each transaction with a paper receipt going to customer at time of service and an electronic journal shall be retained by Concessionaire for the period of time hereinafter required in Section 5.08(a).

5.08 Record Keeping. Concessionaire, its sublessees, subcontractors, and sublicensees, shall keep and maintain copies of all invoices, cash receipts, financial records, supporting records, supporting documents, statistical records, and all other documents pertinent to this Agreement (collectively, "Books and Records"). The Books and Records shall, among other things, show all sales made for cash, or credit, or otherwise, without regard to whether paid or not, the cost of all Personalty, labor, overhead and sales taxes collected, together with the Gross Revenues of the business conducted at the Airport by Concessionaire and the aggregate amount of all sales and services and orders of all such business done upon or within the premises of, or in connection within the Airport. Concessionaire further agrees to keep its Books and Records in accordance with generally accepted accounting principles (GAAP) and agrees to maintain such other books and records as the City may request. Concessionaire its sublessees, subcontractors, and sublicensees, shall keep separate Books and Records for each of its Airport operations (if more than one) and shall provide copies thereof to the City upon request.

a. Books and Records to be Retained. Concessionaire Books and Records shall be kept and maintained during the "Retention Period" (as hereinafter defined). The

“Retention Period” is three (3) years following completion of each Contract Year, or if any audit has been initiated and audit findings have not been resolved at the end of the three (3) year period, the Books and Records shall be retained until resolution of the audit findings. If the Nevada Public Records Law is determined by the City to be applicable to any Books and Records, Concessionaire shall comply with all requirements thereof, Concessionaire shall make all Books and Records required to be maintained hereunder available to the City at the Airport, or at the corporate headquarters of Concessionaire or its sublessees, subcontractors, and sublicensees, as applicable and as may be directed by The City.

b. Understated Gross Revenues. If, as a result of any audit, it is established that Concessionaire understated the Gross Revenues it received from operations covered by this Agreement by three percent (3%) or more (after deductions and exclusions provided for herein) during the period covered by the audit, the entire expense of said audit shall be borne by Concessionaire. The provisions of this Section 5.08 shall survive the expiration of termination of this Agreement.

5.09 Annual Audit Requirements. Concessionaire shall annually provide to the City a special audit report on all Gross Revenues from its operations at the Airport. The special audit reports shall be prepared by an independent Certified Public Accountant in accordance with the provisions of the current edition of “Codification of Statements on Auditing Standards.” The special audit reports shall be filed with the City within ninety (90) calendar days after the end of each Contract Year and shall include the following: (i) schedule of all revenues by category by month; (ii) schedule of revenues by category upon which monthly payments to the City are computed and a list of payments to the City for the period; and (iii) a calculation to determine that the total monthly and annual Percentage Fees were paid in accordance with this Agreement.

5.10 Audit by the City. Notwithstanding any provision in this Agreement to the contrary, the City or its representative(s) may at any time perform audits of all or selected operations performed by Concessionaire under the terms of this Agreement. In order to facilitate the audit performed by the City, Concessionaire agrees to make suitable arrangements with the Certified Public Accountant who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Article 5.09 above, to make available to the City’s representative(s) any and all working papers relevant to the audit performed by the Certified Public Accountant. The City or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of the City. Concessionaire shall have thirty (30) calendar days from receipt of the audit report from the City or its representative(s) to provide a written response to the City regarding the audit report. Concessionaire agrees that failure of Concessionaire to submit a written response to the audit report in accordance with the requirements of this Article 5.10 shall constitute acceptance of the audit report as issued.

5.11 Unpaid Fees. Unless otherwise provided herein, if Concessionaire fails to make payment of any fees, charges or other amounts required to be paid to the City by his Agreement within ten (10) calendar days after same shall become due and payable, plus interest at the rate of one and one-half percent (1 ½ %) per month, shall accrue against the delinquent payments(s)

from the date due until the date payment is received by the City. The foregoing shall in no way be construed as a waiver of any right granted the City in this Agreement, nor shall this provision be construed to prevent the City from terminating this Agreement for cause or from exercising any other right or from enforcing any other provision contained herein or provided by law.

5.12 Place of Payments. Payments required to be made by Concessionaire under this Agreement shall be made payable to:

City of Elko
Elko Regional Airport
Attention: Finance Department
1751 College Avenue
Elko, Nevada 89801

or to such other office or address as may be substituted therefore.

5.13 Licenses, Fees and Taxes. Concessionaire shall pay, on or before their respective due dates, all federal, state, city, county, and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon any premises used by Concessionaire or the estate hereby granted, or upon Concessionaire, or upon the business conducted by Concessionaire, or upon any of Concessionaire's property used in connection therewith, or upon any sums payable hereunder, including, but not limited to any ad valorem, tangible property or intangible property taxes, and sales or excise taxes on any sums payable hereunder. Concessionaire shall maintain in current status all Federal, state, county, city and local licenses and permits required for the operation of the business conducted by Concessionaire. In addition, Concessionaire shall be responsible for any and all other taxes which are due, or which may become due pursuant to Chapter 212 of the Nevada Revised Statutes, as it may be amended from time to time, and any implementing regulations.

5.14 No Set Off. The Concessionaire acknowledges that it has no claims against the City with respect to any of the operations of the Concessionaire at the Airport, if any, or any other agreement it may have with the City, and it has no right of set off or counterclaims against any of the amounts payable by Concessionaire to the City.

5.15 Other Fees and Charges. Concessionaire acknowledges that the City has or will establish, from time-to-time, various fees and charges for the use of various facilities, equipment and services provided by the City and not leased to or specifically provided to Concessionaire hereunder, and the procedures relating to payment of same.

5.16 Additional Charges. If the City is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of Concessionaire to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of any act or omission of the Concessionaire contrary to said conditions, covenants or agreements, Concessionaire agrees to pay the sum or sums so paid by the City or the

expense so incurred by the City, including all interest, costs, damages and penalties, and the same may be added to any installment payment thereafter due hereunder, and each and every part of the same shall be and become recoverable by the City in the same manner and with like remedies as if it were originally a part of the Percentage Fees payable under this Agreement. All such sums of money shall be paid by Concessionaire within thirty (30) calendar days after written demand therefore.

5.17 Dishonored Check or Draft. If Concessionaire delivers a dishonored check or draft to the City in payment of any obligation arising under this Agreement, Concessionaire shall incur and pay a service charge in the maximum amount permitted by law. In such event, the City may require that future payments be made by cashier's check or other means acceptable to the City.

5.18 Net Agreement. Except as otherwise specifically provided herein, this Agreement in every sense shall be without cost or expense to the City including without limitation, cost and expenses relating to the development, maintenance, improvements and operation of the Assigned Area.

5.19 Employee Parking Facilities. The City, while providing parking facilities to Concessionaire's employees in common with employees of other concessionaires and users of the Airport, retains the right, at the sole election of the City, to impose any restrictions it determines are necessary with respect to utilizing these parking facilities.

ARTICLE 6

OPERATIONAL STANDARDS

6.01 Equal Treatment of Customers. Concessionaire shall furnish its services and sales on a fair, equal, and non-discriminatory basis to all customers, and charge fair, reasonable, and non-discriminatory prices for all sales and services.

6.02 Quality of Service. Concessionaire shall provide good, prompt, efficient and courteous service to all users of the Airport. Concessionaire shall maintain close supervision over all its employees to ensure maintenance of a high quality of service and courtesy to the public.

6.03 Hours of Operation. The hours of business during which Concessionaire is to conduct its operations at the Assigned Area shall be such that two (2) meal services will be provided during predetermined hours which are pre-approved by the Airport Director. "Meal services" are defined as breakfast, lunch or dinner. The Airport Director or his designee reserves the right to order changes in the hours of operation to insure that such services are available. The business shall operate six (6) days a week, three hundred twelve (312) days per year; *provided*, Concessionaire may close for any unforeseeable reason for up to fifteen (15) additional calendar days during each one (1) year period; *further provided*, in the event

Concessionaire remains closed in excess of the days permitted by this sentence, Concessionaire shall thereupon immediately pay to City the sum of **Fifty Dollars (\$50.00)** for each additional day of closure. Concessionaire may only change its hours of operation with the written approval of the Airport Director.

6.04 Personnel. Concessionaire's personnel and/or representatives performing services hereunder shall be neat, clean and courteous. Concessionaire shall not permit its agents, servants, or employees to solicit tips, use improper language, or act in a loud, boisterous or otherwise improper manner. The City shall be the sole judge as to whether the conduct of Concessionaire's representative, agents, servants, or employees is objectionable, and if so judged by the City, Concessionaire shall take all steps necessary to eliminate the conditions that occasioned such judgment. Concessionaire shall ensure that its employees are adequately trained and of sufficient number so as to properly conduct the operations of Concessionaire's businesses at the Airport.

6.05 Relationships with Other Concessionaires. Concessionaire shall maintain a friendly, professional, cooperative relationship with all other concessionaires and businesses at the Airport, and shall not engage in open or public disputes, arguments, disagreements, conflicts or actions tending to be incompatible to the best interest of the public of the City. Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Assigned Area or annoy, disturb or be offensive to others in the Terminal Building and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

6.06 Manager. The management, maintenance and operation of the Assigned Area shall at all times be under the supervision and direction of an active, qualified, competent manager ("Manager") who shall at all times be subject to the direction and control of Concessionaire. Concessionaire further agrees to assign a qualified subordinate to be in charge of the Assigned Area and the products and facilities offered in this Agreement, and to be available in the absence of the Manager.

6.07 Wages. Concessionaire shall pay wages that are not less than the minimum wages required by Federal and state law.

6.08 Cash Handling. Concessionaire shall develop a policy outlining the rules, regulations, and operating procedures which apply to its employees within sixty (60) calendar days following the Effective Date which, upon request, shall be submitted to the City for its approval. Concessionaire agrees to demonstrate compliance with the rules, regulations and operating procedures contained within the policy. Concessionaire shall promptly provide the City with any changes, modifications or revisions to its rules, regulations and operating procedures.

6.09 Marketing and Management Plans. Concessionaire shall provide the City with

updated Marketing and Management Plans (collectively, “Plans”) on an annual basis if requested in writing by the City, which shall be subject to the approval of the City. Concessionaire agrees to implement such Plans and Concessionaire shall not modify or deviate from any of the submitted Plans without the prior written approval of the City. The burden of proving compliance with the Plans rests with Concessionaire, and a failure by Concessionaire to comply with the Plans approved by the City shall be an Event of Default under this Agreement.

6.10 Advertising, Contracts and Publicity. All contracts, advertising, solicitation and publicity regarding Concessionaire shall be made in Concessionaire’s lawful name and shall not in any manner misrepresent the relationship between the City and Concessionaire or the City’s interest herein. Concessionaire shall provide an Internet website that is accessible to the general public at all times. Concessionaire’s website may be hosted on a third-party platform, such as Yelp™, Urbanspoon™ or OpenTable™. Concessionaire’s website shall contain (1) a complete menu that lists all food items and their corresponding prices, (2) a map or directions to the restaurant identifying the restaurant location and (3) a telephone number for the restaurant which the public can use to place take-out orders. Concessionaire’s website must be linked to the Elko Regional Airport website at the following URL: www.flyelkonevada.com.

6.11 Solicitation. Concessionaire agrees that its employees shall not solicit business from any area of the Airport, including any area in front of the Assigned Area other than the normal conducting of business as contemplated hereunder from the Assigned Area.

6.12 Standard of Service. Concessionaire shall operate and maintain a standard of service and quality at least equal to that high standard provided at comparable airports and restaurants, while at the same time operating in a commercially reasonable and legally required manner. The City’s determination as to the quality of service that is required shall be conclusive and shall be accepted and performed by Concessionaire.

6.13 Cleanliness. Concessionaire shall, at its sole cost and expense, ensure that the Assigned Area is maintained in a sanitary, clean, neat, attractive and orderly manner, free of debris and trash, and in compliance with all applicable State of Nevada requirements, to include the regulations applicable to “Food Establishments.” (See **Exhibit D**). In the event Concessionaire fails to comply with the preceding sentence, the City may, in its discretion, enter the Assigned Area and perform such maintenance and other work as is necessary to render the Assigned Area compliant and Concessionaire shall reimburse the City for the reasonable value of work performed or the actual cost incurred, as appropriate, an administrative charge in the amount of ten percent (10%) of the value or cost of the work. The foregoing amount shall be paid to the City within fifteen (15) days of receipt of an invoice from the City.

6.14 Cleanliness Inspections. The City will conduct Cleanliness Inspections of the Assigned Area every three (3) months to determine if the area is clean, orderly and otherwise compliant with this Agreement; *provided*, the City will provide Concessionaire with at least seven (7) calendar days’ advance notice of the time and date of the next Cleanliness Inspection. Any discrepancies noted during a Cleanliness Inspection will be described in writing and

promptly submitted to the Concessionaire in a Correction Notice. In the event one or more discrepancies are identified on a Correction Notice, the City may conduct such additional unannounced inspections as it deems appropriate until all such discrepancies have been corrected. Should the Concessionaire fail to maintain the Assigned Area in a clean, orderly and compliant manner for a period of thirty (30) or more calendar days during the Term, the Concessionaire will automatically be deemed an Event of Default.

6.15 Rules and Regulations. Concessionaire shall inform each of its employees of the pertinent rules and regulations of the Airport and the applicable provisions of this Agreement, and instruct such employees and representatives as to the methods and procedures used at the Airport.

6.15 Complaints. Concessionaire shall forward to the City upon request, a list of any complaints, whether verbal or written, accompanied by Concessionaire's response to or resolution of any such complaints. Questions or complaints regarding the quality of services or rates, whether raised by customers' complaints or on the City's own initiative or otherwise, may be submitted to Concessionaire for response by Concessionaire. Concessionaire shall provide a response to the City, upon request, within seven (7) calendar days following submission by customers or by the City of said questions, complaints or comments.

6.16 Contact Number. Concessionaire shall provide the City with emergency telephone numbers at which Concessionaire's manager may be reached on a 24-hour basis.

6.17 Conflict. Should a conflict arise between Concessionaire and other concession operators at the Airport regarding the scope of concession privileges, the Airport Director's decision on the matter shall be final and conclusive. Concessionaire agrees to abide by the Airport Director's decision.

6.18 Vandalism and Fraud. Concessionaire shall be required to resolve vandalism and fraud problems, all of which shall be at the sole risk and expense of Concessionaire. Concessionaire shall assume all financial responsibility for dishonored credit cards, fraudulent calls and loss of funds or non-collected funds. None of the foregoing costs shall permit or entitle Concessionaire to any deductions from or credits against the Percentage Fees payable to the City.

6.19 Credit Cards. The Concessionaire shall honor at least three (3) major credit cards.

6.20 Accessibility. Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof in the Assigned Area or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Concessionaire shall not place any additional lock of any kind upon

any window or interior or exterior door in the Assigned Area, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained in the Assigned Area, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to City any and all keys to the interior or exterior doors at the Assigned Area, whether the keys were furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by the City are lost, Concessionaire shall promptly pay the City, on demand, an amount equal to the cost of replacement.

6.21 No Auction. Concessionaire shall not conduct or permit any sale by auction in the Assigned Area.

ARTICLE 7

MAINTENANCE STANDARDS

7.01 Maintenance and Repairs. Concessionaire is responsible for all maintenance and repairs of and to the Assigned Area of any nature except:

- a. Cleaning exterior unit Terminal windows.
- b. Structural repairs to the roof, floor and exterior walls and windows of the Airport Terminal.
- c. All HVAC supply mains, and electrical power supply up to the point of connection to the Assigned Area.

7.02 Minimum Maintenance Costs. Except as otherwise specifically provided in this Agreement, Concessionaire agrees to bear the cost of all maintenance of the Assigned Area during the Term.

7.03 Water Leakage. The City shall not be liable to Concessionaire for any damage to food or beverage products or merchandise, trade fixtures or personal property of Concessionaire in the Assigned Area caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment. Furthermore, the City shall not be liable to Concessionaire for any damage to persons or property of any kind caused by any other damage or disrepair to the structural or permanent portions of any Assigned Area, or the Terminal, due to water leakage unless (i) the City has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire; and (ii) any such damage or disrepair shall not have been due to any actions or negligence of Concessionaire or any of its agents, employees, representatives, or invitees.

7.04 Janitorial and Cleaning Services. Concessionaire shall provide at its expense such janitor, toilet, and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Area.

7.05 Concessionaire's Responsibilities. Concessionaire shall maintain and make necessary repairs to the interior of its Assigned Area and the furniture, fixtures and equipment therein and appurtenances thereto.

7.06 Service Lines. Concessionaire shall keep and maintain in good condition all service lines and electrical equipment and fixtures located at or in its Assigned Area.

7.07 Quality of Repairs. All repairs done by the Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time-to-time by the City or by Federal, state and local authorities having jurisdiction over the work.

7.08 Inspection Right. In addition to Cleanliness Inspections, the City may inspect the Assigned Area at any time to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Agreement. Upon written notice by the City to Concessionaire, Concessionaire shall perform any required maintenance or repair needed to meet the standards of this Agreement. The City shall reasonably judge Concessionaire's performance under this Article as to the quality of maintenance and repair.

7.09 Failure to Make Repairs or Undertake Maintenance. If, (i) within 10 calendar days in non-emergency situations, and (ii) within a reasonable time in emergency situations, Concessionaire refuses or neglects to undertake any maintenance, repair or replacements requested by representatives of the City, or if the City is required to make any repairs necessitated by the negligent acts or omissions of Concessionaire, its employees, agents, servants or licensees, the City shall have the right to make such repairs on behalf of and for Concessionaire. Such work shall be paid for by the Concessionaire within ten (10) calendar days following demand for said payment at the cost to the the City, plus twenty-five percent (25%) administrative overhead.

7.10 Trash and Garbage. Concessionaire will provide for timely and adequate sanitary handling and removal of all trash, garbage and other refuse caused as a result of Concessionaire's operations. Concessionaire agrees to provide and use suitable covered receptacles for all garbage, trash and other refuse in its Assigned Area. Piling of boxes, cartons, barrels or similar items shall not be permitted in a public area. Concessionaire shall maintain the Assigned Area in a neat, orderly and clean condition. There shall be no food, papers, or rubbish visible at any time. This requirement includes the regular cleaning of the grease traps to prevent stoppage of the outside sewer main.

7.11 Deliveries. All deliveries will be made in a manner, location, and at times established by the City. All vendors traveling on the apron must be escorted by an employee or agent of Concessionaire (and otherwise in accordance with the requirements of the the City. Concessionaire and all its vendors must comply with the requirements of the TSA and with any applicable Airport Security Plan.

7.12 Rodents, Insects and Pests. Concessionaire agrees to provide adequate control of rodents, insects, and other pests in its Assigned Area. In the event that Concessionaire's rodent, insect and pest control program is not acceptable or sufficient, the City may seek to control such rodents, insects and pests by other means. Concessionaire agrees to reimburse the City no later than ten (10) calendar days following demand for any expenses incurred by the City due to conditions within Concessionaire's Assigned Area in violation of the preceding sentence. In the event Concessionaire fails to reimburse the City within ten (10) calendar days, Concessionaire shall reimburse the City for costs expended plus twenty-five percent (25%) administrative overhead.

7.13 Damage to Persons and Property. Except as otherwise provided herein, the City shall not be liable to Concessionaire for any damage to persons or property of any kind caused by damage or disrepair to the Assigned Area, unless the City has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire; and any such damage or disrepair was not due to negligence of Concessionaire or any of its agents, employees, representatives, or invitees.

7.14 Structural, Electrical or System Overloading. Concessionaire shall do nothing and shall make no improvements, changes, alterations, additions, maintenance or repairs to the Assigned Area which might impair the structural soundness of the Terminal Building, result in an overload of utility, plumbing, or HVAC systems serving the Terminal Building or interfere with electric, electronic, or other equipment at the Airport. In the event of a violation of this section, Concessionaire shall immediately remedy the violation at its sole cost and expense.

7.15 Interruption of Utility Services. The City shall not be liable for failure to supply any utility services. The City may temporarily discontinue utility services as may be reasonably necessary for maintenance, safety or any event constituting a Force Majeure. The City shall not be liable for damages to persons or property for any such discontinuance of utilities, nor shall such discontinuance in any way be construed as cause for abatement of any amount due from Concessionaire or release Concessionaire from any of its obligations hereunder.

7.16 Fire Hazards. Concessionaire shall do nothing and shall make no improvements, changes, alterations, additions, maintenance or repairs to the Assigned Area which might create a condition that is hazardous to persons or property, or which increases or has the potential to increase the amount of any premium paid for fire insurance. In the event of a violation of this section, Concessionaire shall immediately remedy the violation at its sole cost and expense.

7.17 Nuisances. Concessionaire shall conduct its business in such a manner as to prevent any and all nuisances, and so as to not annoy, disturb or offend the public or other occupants of the Terminal Building, to include preventing unpleasant odors and loud noises within and in the vicinity of the Assigned Area.

ARTICLE 8

CONSTRUCTION OF IMPROVEMENTS/ SIGNAGE

8.01 Required Improvements. In the event Concessionaire installs additional improvements, furniture, trade fixtures and/or equipment for the operation of the food and beverage concession within the Assigned Area, it shall do so at its sole cost and expense and in accordance with the requirements of this Agreement.

8.02 Alterations, Improvements or Additions. Concessionaire shall make no alterations, additions or improvements to the Assigned Area without the prior written approval of the City, which approval may be granted or withheld by the City in its sole discretion.

8.03 Construction Requirements. All improvements, alterations and additions made by Concessionaire to the Assigned Area shall be of high quality and meet applicable Federal, state and local laws, regulations, together with the City's rules and requirements. Prior to the commencement of construction, two (2) full and complete set of plans and specifications for all improvements, alterations and/or additions shall be submitted to the Airport Director for review and approval, which approval may be granted or withheld in the Airport Director's sole discretion. All improvements shall be completed in accordance with construction standards established by the City, and the plans and specifications approved by the City.

8.04 Construction Requirements and Bonds. Concessionaire shall ensure that all improvements are constructed to completion in accordance with the approved plans and specifications and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Concessionaire shall satisfy all applicable prevailing wage and any other Federal, state and local requirements. Concessionaire, at its sole cost and expense, shall cause to be made, executed and delivered to the City prior to commencement of any improvements to the Assigned Area, a performance bond and a payment bond, drawn in a form and substance acceptable to the City, and issued by a company approved by the City, guaranteeing compliance by Concessionaire of its obligations arising under this Article. Such payment and performance bonds shall comply with the form of financial guarantee required by Elko City Code Section 3-3-45(A). Concessionaire shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance and physical damage insurance on a Builder's Risk form with the interest of the City endorsed thereon, in such amounts and in such manner as the Airport Director may reasonably require. The Airport Director may require additional insurance for any alterations, additions or improvements approved pursuant to this Agreement in such amount(s) as the Airport Director reasonably determines to be necessary.

8.05 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by the City to subject the City to liability under the lien laws of the State of Nevada. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of

this provision of this Agreement and the exemption applicable to political subdivisions of the state contained in NRS 108.22148(1). In the event that a construction lien is filed against the Assigned Area, or other the City property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security within ten (10) calendar days, the City may do so in its sole discretion and thereafter charge Concessionaire, and Concessionaire shall promptly pay to the City upon demand all costs incurred by the City in connection with the satisfaction or transfer of such claim, including, but not limited to, attorney's fees.

8.06 Signage. Concessionaire has the right to install and maintain appropriate signs in the Assigned Area provided the design, installation and maintenance of such signs is consistent with the graphic standards of the Airport and has the written approval of the City prior to installation. The signage existing in the Assigned Area as of the Effective Date shall in no way establish the standard (or any precedent whatsoever) as to the type of signage that the City shall deem acceptable in the future in connection with any other improvements to the Assigned Area or upon any replacement of existing signage.

8.07 Construction by City. In the event the City engages in any construction activity in the Airport Terminal, such as remodeling, repair, expansion, relocation or maintenance activities, Concessionaire shall release and hold the City harmless from and against any claims based upon or in any manner related to or arising from loss of business, inconvenience or nuisance.

ARTICLE 9

TITLE TO IMPROVEMENTS,

9.01 Title to Improvements. All Improvements constructed or placed upon the Assigned Area, excluding furnishings, equipment and trade fixtures, shall become the absolute property of the City upon termination or expiration of this Agreement and the City shall have every right, title, and interest therein, free and clear of any liens, mortgages or encumbrances.

9.02 Evidence of Transfer of Ownership. Upon the request of the City, Concessionaire shall provide the City with a bill of sale or other evidence of the transfer of ownership of the Improvements together with evidence satisfactory to the City that the Improvements are free from liens, mortgages and other encumbrances.

9.03 Removal of Improvements. Notwithstanding anything in this Agreement to the contrary, the City shall be entitled, at its option, to have the Assigned Area returned to the City free and clear of some or all of the Improvements at Concessionaire's sole cost and expense. In such event, the City shall provide timely notification to Concessionaire of its election to require removal of all Improvements and, to the extent possible, the City shall notify Concessionaire of the foregoing at least sixty (60) calendar days prior to the expiration or termination of this Agreement. Concessionaire shall have sixty (60) calendar days from date of notice within which

to remove the Improvements identified by the City. If Concessionaire fails to remove the Improvements, the City may do so. Concessionaire agrees that Concessionaire shall fully assume and be liable to the City for payment of all costs of removal of the Improvements (whether direct or indirect) incurred by the City, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable to the City within thirty (30) calendar days from the date of the written notice provided by the City. The obligations arising under this Article shall survive the expiration or termination of this Agreement.

9.04 Removal of Concessionaire's Equipment. Concessionaire shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Agreement, all of Concessionaire's Equipment, as distinguished from "Concession Equipment" and as hereinafter defined. "Concessionaire's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings and personal property installed by Concessionaire and used in the operation of the business of Concessionaire (as distinguished from the use and operation of the Assigned Area) which is listed on an annual inventory list submitted by Concessionaire and approved by the City. If such removal shall injure or damage the Concession Space, Concessionaire agrees, at its sole cost, at or prior to the expiration or terminal of this Agreement, to repair such injury or damage in good and workmanlike fashion and to place the Assigned Area in the same condition as the Assigned Area would have been if such Concessionaire's Equipment had not been installed. If Concessionaire fails to remove any of Concessionaire's Equipment by the expiration or termination of this Agreement, the City may, in its discretion, keep and retain any of such Concessionaire's Equipment or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Concessionaire any costs of City in removing the same and in restoring the Assigned Area in excess of the actual proceeds, if any, received by City from disposition thereof.

ARTICLE 10

SECURITY

Concessionaire acknowledges and accepts full responsibility for the security and protection of the Assigned Area and any and all inventory and equipment now existing or hereafter placed on or installed at the Airport, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all rules and regulations of the City and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. The foregoing includes compliance with the TSA regulations contained at 49 CFR Part 1520 (Protection of Sensitive Security Information).

ARTICLE 11

INSURANCE

11.01 Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term of this Agreement, the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 11, nor the City's review, or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

11.02 Concessionaire shall insure against the following risks at its own expense to the extent stated:

- a. Worker's Compensation or Employer's Liability in the sum of \$1,000,000.00;
- b. Commercial general liability insurance including blanket contractual liability, broad form property damage (including Concession Equipment), personal injury, premises medical payments, interest of employees as additional insureds, incidental medical malpractice and broad form general liability endorsement, covering as insured Concessionaire and City with not less than the following limits of liability: Bodily Injury and Property Damage \$1,000,000.00 combined single limit and \$2,000,000 per occurrence for bodily injury, property damage and personal injury;
- c. Comprehensive automobile liability covering all owned, non-owned or hired automobiles to be used by Concessionaire in the amounts of \$500,000.00 combined single limit and \$1,000,000 per occurrence for bodily injury and property damage; and
- d. Concessionaire shall provide not less than \$1,000,000.00 excess of the limits as noted in Subsection (b) comprehensive general liability insurance and (c) comprehensive automobile liability. These policies shall provide that the insurance company or an attorney approved by the insurance company shall defend any suit or proceeding against City or any member, officer, agent, attorney-in-fact or employee of City alleging an error, omission or act and seeking damages in relation to the Assigned Area or Concessionaire's business if the suit is groundless, false or fraudulent.

In addition to the above, the Concessionaire shall maintain such insurance as is reasonably required for the type and scope of work performed. Before beginning work, Concessionaire shall furnish insurance certificates to City and shall provide proof of coverage upon request by City at any time during the term of this Agreement.

11.03 All required insurance shall be maintained with responsible insurance carriers qualified to do business in the State of Nevada. As soon as practicable on execution of this Agreement and before commencing any performance under this Agreement, Concessionaire shall deposit certificates of insurance bearing notations or accompanied by other evidence satisfactory to City of coverage and the payment of premiums. Thereafter, certification of premium payment and certificates of insurance evidencing policy renewal shall be deposited with City not less than ten (10) days before the expiration dates of the expiring policies.

11.04 Riders providing substantially as follows shall be made a part of the insurance policies described above in this Agreement:

- a. The insurance company agrees that it will give a thirty (30) day prior written notice of cancellation of any of the coverages shown in the certificate;
- b. Notice of accident shall be given by Concessionaire to the insurance company as required under the terms of this policy, or notice of claim shall be given by the City to the insurance company as required under the terms of the policy. Notice to the insurance company by either party shall be deemed sufficient notice under the policy;
- c. The presence of representatives of the City or other authorized persons in the Assigned Area shall not invalidate the policy;
- d. Violation of any of the terms of any other policy issued by the insurance company shall not by itself invalidate the policy; and
- e. Save and except for worker's compensation or employer's liability insurance, the City is named and recognized as additional insured to the insurance policies required by this Agreement.

11.05 The insurance policies described above in this Agreement shall be kept in force for the duration of the Term. The failure of Concessionaire to comply with any of the terms of this Article 11 shall, without limitation, be deemed an Event of Default.

ARTICLE 12

INDEMNIFICATION

To the fullest extent permitted by law, the Concessionaire agrees to indemnify, defend, release and hold harmless the City, its officers, agents, volunteers, and employees from and against all claims, damages, losses, and expenses, including all attorney fees and court costs arising out of, resulting from, or in any manner relating to the performance or furnishing of Concessionaire's work or services under this Agreement, or arising from claims brought by third parties in relation to Concessionaire's business or other activities at the Airport, to include the acts or omissions of Concessionaire's officers, employees, representatives, vendors and suppliers, invitees, contractors, subcontractors and agents.

ARTICLE 13

DAMAGE OR DESTRUCTION OF PREMISES/IMPROVEMENTS

13.01 Concessionaire's Obligations. Concessionaire hereby assumes full responsibility

for the condition of the Assigned Area and character, acts and conduct of all persons admitted to the Assigned Area by or with the actual or constructive consent of Concessionaire or by or with the consent of any person acting for or on behalf of Concessionaire. If the Assigned Area improvements, or any part thereof, are damaged in any way whatsoever by the act, default or negligence of Concessionaire, or of Concessionaire's members, agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Assigned Area by Concessionaire or otherwise, Concessionaire shall, at its sole cost and expense, restore the Assigned Area to the condition existing prior to such damage. Concessionaire shall commence such restoration within thirty (30) calendar days and shall diligently pursue such restoration to completion. Such repairs, replacements or rebuilding shall be made by Concessionaire in accordance with the construction requirements contained herein and as established by the City. If Concessionaire fails to restore the Assigned Area as required above, the City shall have the right to enter the Assigned Area and perform the necessary restoration, and Concessionaire hereby expressly agrees that it shall fully assume and be liable to the City for payment of the costs therefor, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) calendar days from date of written notice thereof.

13.02 Right to Cancel. If any of the improvements in the Assigned Area are damaged or destroyed in whole or in part by fire or other casualty, Concessionaire may, subject to approval of the City, be relieved of the obligation to repair, replace or rebuild the same and have the right to cancel this Agreement provided (i) Concessionaire shall provide the City written notice thirty (30) calendar days notice prior to such proposed termination and (ii) the City approves such termination. All fees and other sums due hereunder payable under this Agreement shall be prorated and paid to the date of such termination. Concessionaire expressly agrees, covenants and warrants that nothing herein shall relieve Concessionaire of any liability it might have arising out of, or in any way resulting from any damage to the Assigned Area and Concessionaire further waives any claim against the City for damages or compensation, should this Agreement be so terminated.

13.03 Insurance Proceeds. The City shall be entitled receive any insurance proceeds made available on account of any fire or other casualty affecting the Assigned Area. Any insurance proceeds shall be deposited in an escrow account approved by the City so as to be available to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Concessionaire shall pay any additional sums required into the escrow account. If the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be remitted to Concessionaire.

13.04 Termination Upon Destruction or Other Casualty. In the event the Assigned Area, or any part thereof, shall be destroyed or damaged in whole or in part by fire, water or any other cause, or if unforeseen occurrence shall likewise render the fulfillment of this Agreement by the either party impossible, then either party may, at its sole option, terminate this Agreement upon

thirty (30) days' written notice to the other party. Concessionaire shall pay all fees, rental, costs, and satisfy all of its obligations hereunder arising prior to the time of such termination, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligation hereunder other than those which expressly survive expiration or termination of this Agreement. Concessionaire hereby waives any claim for damages or compensation should this Agreement be so terminated.

ARTICLE 14

DEFAULT AND TERMINATION

14.01 The City's Rights of Termination. The City, in addition to any other right of termination herein or any other rights to which it may be entitled by law or in equity or otherwise, may cancel this Agreement immediately after giving Concessionaire written notice upon or after the happening of any one or more of the following events ("Events of Default"):

- a. Concessionaire fails to make due and punctual payment of any fees or charges payable hereunder on the date specified for such payments and such default shall continue for a period of fifteen (15) calendar days thereafter, *provided* however, upon the expiration of the fifteen (15) day period contained in this subsection, Concessionaire shall not be entitled to the additional thirty (30) day notice set forth above;
- b. Concessionaire files a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or substantially all of Concessionaire's assets;
- c. Appointment of a receiver or trustee of Concessionaire's assets by a court of competent jurisdiction or by a voluntary agreement with Concessionaire's creditors;
- d. Abandonment by Concessionaire of the Assigned Area or the conduct of its business. Suspension of operations for a period of ten (10) consecutive calendar days, except as otherwise permitted under this Agreement, will be considered abandonment;
- e. Concessionaire is prevented for a period of thirty (30) calendar days from conducting its business or it is so prevented from conducting any business at the Airport by reason of the United States, acting directly or indirectly, taking possession of, in whole or substantial part, the Assigned Area;
- f. The failure of Concessionaire to take possession of the Assigned Area within ten (10) days following the Effective Date;
- g. The commission of a crime in the Airport Terminal; or
- h. The failure of Concessionaire within thirty (30) calendar days after receipt of written notice from the City to keep, perform or observe any other term, covenant or condition of this Agreement to be kept, performed or observed by Concessionaire; *provided*, however, that

if by its nature such default cannot be cured within such thirty (30) calendar day period, then such default shall not constitute an Event of Default if Concessionaire commences to cure or remove such default within said thirty (30) calendar day period and thereafter pursues the curing or removal of such default with due diligence.

14.02 Payment after Default. The acceptance of rents, fees or charges by the City from Concessionaire after a default by Concessionaire shall not be deemed a waiver or estoppel of any right on the part of the City, to include the right to terminate this Agreement.

14.03 Termination and Reletting. In addition to any other remedies available to the City, in the event of an early termination of this Agreement for any reason, to include termination due to an Event of Default, the City shall have the right to reenter and take possession of the Assigned Area, removal Concessionaire's personal property, make any necessary repairs and enter into another agreement for use and/or occupancy of the Assigned Area, or any part thereof, for the remainder of the Term. In the event of such early termination, Concessionaire shall remain liable to the City for the full amount of all fees and charges due under this Agreement and shall continue to pay the same or such part thereof that remains unpaid, together with interest thereon at the rate of eighteen percent (18%) per annum. Concessionaire shall remain liable for such payments whether or not another agreement for the use and/or occupancy of the Assigned Area is entered into, subject to the City's duty to reasonably mitigate its damages.

ARTICLE 15

AIRPORT SECURITY

Concessionaire agrees to observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Concessionaire or Airport, as such regulations or requirements have been or may be amended, including without limitation, Title 14, Part 139 of the Code of Federal Regulations (Airport Certification) and Title 49, Part 1500 of the Code of Federal Regulations (pertaining to TSA rules). Concessionaire agrees to comply with such airport security rules and regulations as may be reasonably prescribed by the City, and to take such steps as may be necessary or directed by the City to insure that employees, invitees and guests observe these requirements. Concessionaire shall conduct background checks of its employees and representatives to the extent required by any Federal, state or local law or if, to the extent permitted by law, required by the City. The City shall have the right to require the removal or replacement of any employee or representative of Concessionaire at the Airport that the City has reasonably determined may present a risk to public safety or the security of the Airport. Concessionaire agrees to rectify any security deficiency or other deficiency as may be determined by the City, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, the City may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that the City may take whatever action is necessary to rectify any security deficiency or any other deficiency identified

by the City, the FAA or TSA.

ARTICLE 16

ASSIGNMENT

Concessionaire shall not assign, transfer or otherwise convey an interest in this Agreement, or sublet the Assigned Area or any portion thereof (hereinafter collectively referred to as "Assignment"), without the prior written consent of the City, approved by the City Council, which consent may be granted or withheld by the City in its sole discretion. Any such attempted Assignment without written approval by the City approval shall be null and void. In the event the City consents to an Assignment, the Assignment shall be subject to those terms and conditions set forth in the City's written consent, to include conditions imposed by any resolution of the City Council approving the Assignment. The City may freely assign this Agreement at any time without the consent of Concessionaire, and upon assumption by such assignee of the City's rights and obligations hereunder, the City shall be released from all liability and obligation arising hereunder after such assignment.

ARTICLE 17

COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES

Concessionaire (including its officers, agents, servants, employees, contractors, sub-operators, and any other person over which Concessionaire has the right to control) agree that throughout the Term of this Agreement, Concessionaire shall at all times be and shall remain in full and complete compliance with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended, including, but not limited to the City, the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), FAA Advisory Circulars and Airport rules and regulations. Concessionaire shall submit to the City, upon request, any reports or other information which the City is required by law to obtain from Concessionaire, or which the Airport Director determines is needed for Airport operations or management of this Agreement.

ARTICLE 18

AMERICANS WITH DISABILITIES ACT

Concessionaire shall comply with the requirements of the Americans with Disabilities Act (ADA) and all State of Nevada anti-discrimination laws pertaining to persons with

disabilities, to include, without limitation, NRS Chapter 233 (Nevada Equal Rights Commission), with respect to Concessionaire's facilities and operations at the Airport.

ARTICLE 19
NO IMPAIRMENT OF BONDS

The parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Concessionaire agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Concessionaire agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

ARTICLE 20
NON-DISCRIMINATION

Concessionaire, as a part of the consideration hereof, does hereby covenant and agree, that (1) no person on the grounds of race, color, creed, sex, age, disability, sexual orientation, gender identity or expression, marital status, military status, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities; and (2) that Concessionaire shall use the Airport Area in compliance with all requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation- Effectuation of Title VI of the Civil Rights Act of 1964. In addition to the foregoing, **Appendices 1, 2, 3 and 4** are incorporated into this Agreement by this reference. Concessionaire shall incorporate **Appendices 1, 2, 3 and 4** into all contracts and subcontracts with third parties relating to its use of the Assigned Area. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to immediately terminate this Agreement.

ARTICLE 21
DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

21.01 Applicability of Regulations. This Agreement is subject to the requirements of the

U.S. Department of Transportation’s regulations, Title 49, Code of Federal Regulations, Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions. In addition to any other provisions contained or incorporated by reference in this Agreement, the Concessionaire agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and that it will cause those businesses to similarly include the statements in further agreements.

21.02 Policy. It is the policy of the City to recognize the applicability of the United States Department of Transportation’s Rules and Regulations governing Airport Concession Disadvantaged Business Enterprise (ACDBE)/DBE participation. The City is also fully committed to the implementation of these Rules and regulations through its approved Airport Concession Disadvantaged Business Enterprise (ACDBE) Program.

21.03 Certification (49 CFR Part 26.61-91, Part 23 Subpart C). The City will use the procedures and standards of Part 26.61-91 and 23.31, Subpart C for certification of ACDBE’s to participate in its ACDBE program.

21.04 ACDBE Goal. The City encourages the inclusion of firms owned and controlled by minorities and women in contract awards and projects whenever feasible. This policy is consistent with the administrative mandate set out by the United States Department of Transportation Code of Federal Regulations in Title 49, Part 23 and Part 26. The City intends to meet or exceed the goals applicable to concessions other than car rentals set forth in 49 CFR 23.41, et seq, or make good faith efforts to do so. Concessionaire agrees to submit quarterly reports to the City as required concerning the participation of certified ACDBE firms.

21.05 Incorporation of Exhibit A (Disadvantaged Business Enterprise Participation). **Exhibit A** to this Agreement, entitled “Disadvantaged Business Enterprise Participation,” is incorporated herein by this reference.

ARTICLE 22

RIGHTS RESERVED TO THE CITY

Rights not specifically granted to Concessionaire by this Agreement are expressly and independently reserved to the City. The City expressly reserve(s) the right to prevent any use of the described Assigned Area which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard.

ARTICLE 23

RIGHT OF ENTRY

In addition to any other rights of entry contained herein, the City shall have the right to enter the Assigned Area for the purposes and to the extent necessary to protect the City's rights and interest, to provide for periodic inspection of said Assigned Area from the standpoint of safety and health, and to verify Concessionaire's compliance with the terms of this Agreement.

ARTICLE 25

PROPERTY RIGHTS RESERVED

This Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport, and to any terms or conditions imposed upon the Airport by any other governmental entity.

ARTICLE 26

SIGNS

No signs, posters, or similar devices shall be erected, displayed, or maintained by Concessionaire in view of the general public in, on, or about the Assigned Area or elsewhere on the Airport, without the prior written approval of the City, which approval may be granted or withheld by the City in its sole discretion. Any signs that are not approved by the City shall be immediately removed at the sole cost and expense of Concessionaire. All signs approved for Concessionaire's operations at the Airport shall be at the cost of Concessionaire.

ARTICLE 27

MORTGAGE RIGHTS OF CONCESSIONAIRE

Concessionaire may mortgage, pledge, or hypothecate its personal property provided Concessionaire as a condition precedent first provides to the City written evidence that the priority rights of the City under this Agreement will not be adversely affected by such action, and obtains the City's consent thereto.

ARTICLE 28

PRIVILEGE FEES AS A SEPARATE COVENANT

Concessionaire shall not for any reason withhold or reduce Concessionaire's required

payments of Percentage Fees and other fees and charges provided in this Agreement, it being expressly understood and agreed by the parties that the payment of fees and charges is a covenant by Concessionaire that is independent of the other covenants of the parties hereunder.

ARTICLE 29

NOTICES AND COMMUNICATIONS

All notices or other communications to the City or Concessionaire pursuant hereto shall be deemed validly given, served, or delivered, upon deposit in the United States mail, certified and with proper postage and certified fee prepaid, addressed as follows:

TO THE CITY:

Elko Regional Airport
Airport Director
975 Terminal Way
Elko, Nevada 89801

TO CONCESSIONAIRE:

or to such other address as the addressee may designate in writing by notice to the other party delivered in accordance with the provisions of this article.

ARTICLE 30

TAXES, PERMITS, LICENSES

Concessionaire shall bear, at its own expense, all costs of operating its equipment and business, including any and all taxes assessed, whether tangible or intangible, against its interest in the Assigned Area, and including any sales tax imposed on the rental and concession fee payments, furnishings, equipment or stocks of merchandise and supplies, and Concessionaire shall obtain and pay for all permits, licenses, or other authorizations required by the City in connection with the operation of its business at the Airport. Concessionaire shall have the right to challenge any and all taxes assessed against its interest in the Assigned Area at its own expense.

ARTICLE 31

SURRENDER OF ASSIGNED AREA

Concessionaire shall surrender and deliver its Assigned Area to the City upon termination of this Agreement in the same condition as existed at the commencement of the Agreement, ordinary wear and tear excepted. Provided the Concessionaire is not in default in the payment of rents, fees and charges required under this Agreement, Concessionaire, at the termination of this Agreement, shall remove all of its personal property from the Assigned Area forthwith. Failure on the part of Concessionaire to remove its personal property within five (5) business days of the date of termination shall constitute a gratuitous transfer of title thereof to the City for whatever disposition is deemed to be in the best interest of the City. Any costs incurred by the City in the disposition of such personal property shall be borne by the Concessionaire.

ARTICLE 32

NO ACCEPTANCE OF SURRENDER

No act or action done by the City during the term of this Agreement shall be deemed an acceptance of the surrender of this Agreement and no acceptance of a surrender shall be valid unless in writing.

ARTICLE 33

PERSONAL PROPERTY

Any personal property of Concessionaire or of others placed in the Assigned Area shall be at the sole risk of the Concessionaire or the owners thereof, and the City shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage, and Concessionaire hereby waives all rights of subrogation or recovery from the City for such damage, destruction or loss. The City shall not be liable for any damage or loss of any personal property placed or moved on to the Assigned Area.

ARTICLE 34

APPLICABLE LAW AND VENUE; PREVAILING PARTY

This Agreement shall be construed in accordance with the laws of the State of Nevada. Venue for any action brought pursuant to this Agreement shall be in Elko County, Nevada. Any action for breach of or enforcement of any provision of this Agreement shall be brought in the Fourth Judicial Circuit Court in and for the County of Elko, State of Nevada. In the event either party brings an action to enforce or interpret any provision in this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees and costs.

ARTICLE 35

INVALIDITY OF CLAUSES

The invalidity of any portion, article, paragraph, provision or clause of this Agreement shall have no effect upon the validity of any other part of portion thereof.

ARTICLE 36

FEDERAL RIGHTS TO RECLAIM

In the event a United States governmental agency shall demand and take over the portion of the Airport where the Assigned Area is located for a period in excess of thirty (30) calendar days, either party may terminate this Agreement by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof.

ARTICLE 37

RELATIONSHIP OF THE PARTIES

The relationship of the parties is contractual. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, or joint venture, or any business association between the City and Concessionaire.

ARTICLE 38

STATUS UPON EXPIRATION

If Concessionaire holds over and continues in possession of the Assigned Area after expiration or termination of this Agreement, other than with the written consent of the City, the relationship between the parties shall be one of licensor-licensee, and Concessionaire will be deemed to be occupying the Assigned Area at sufferance from month-to-month, without limitation on any of the City's rights or remedies, subject to all of the terms and conditions of this Agreement. The monthly license fee for the Assigned Area shall be based on the same formula as the last month of the Term of the Agreement prior to the hold over, but shall be two times that amount. It is agreed and understood that any holding over of Concessionaire after the expiration or termination of this Agreement shall not renew and extend same, but shall operate and be construed as a license from month-to-month. In addition, Concessionaire shall pay to the City any other charges required to be paid hereunder during any such holdover period. Concessionaire 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 or expiration of this Agreement, whether such loss or damage may be contemplated at the execution of this Agreement or not. It is expressly agreed that acceptance of the foregoing payments by the City in the event that Concessionaire

fails or refuses to surrender possession shall not operate or give Concessionaire any right to remain in possession nor shall it constitute a waiver by the City of its right to immediate possession of the premises. The foregoing month-to-month license during a period of holding over may be terminated at any time by either party upon thirty (30) days' written notice to the other party.

ARTICLE 39

EMINENT DOMAIN

In the event that the United States of America or the State of Nevada shall, by exercise of the right of eminent domain or any other power, acquire title in whole or in part of the Airport, including any portion assigned to Concessionaire, Concessionaire shall have no right of recovery whatsoever against the City but shall make its claim for compensation solely against the United States of America or the State of Nevada, as the case may be.

ARTICLE 40

FORCE MAJEURE

In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental law or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, the performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; *provided*, however, in no event shall the foregoing excuse the payment of any sums due under this Agreement. Either party desiring to rely upon such a cause shall, when the cause arises, give prompt notice thereof to the other party and, when the cause ceases to exist, shall give prompt notice thereof to the other party.

ARTICLE 41

WAIVERS

No waiver by the City at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure or omission of the City to reenter the Assigned Area or to exercise any right, power, privilege, or option arising from any default nor subsequent acceptance of fees and charges then or thereafter accrued, shall impair any such right, power, privilege, or option or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein. No notice by the City shall be required to restore or revive time as of the essence hereof after waiver by the

City or default in one or more instances. No option, right, power, remedy, or privilege of the City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, power, options, or remedies given to the City by this Agreement are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by the City shall not impair its rights to any other right, power, option or remedy.

ARTICLE 42

TIME OF THE ESSENCE

Time is expressed to be of the essence of this Agreement.

ARTICLE 43

CONSTRUCTION OF AGREEMENT

Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.

ARTICLE 44

MISCELLANEOUS

All of the terms and provisions hereof shall be binding upon and the benefits inure to the parties hereto and their heirs, personal representatives, successors and assigns. Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. This Agreement, and instruments or documents relating to same, shall be construed under Nevada law. This Agreement represents the complete agreement of the parties and any prior concession agreements or representations, regarding concession agreement, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the parties hereto. The invalidity of any portion, article, paragraph, provision or clause of this Agreement shall have no effect upon the validity of any other part of portion thereof. Paragraph headings in this Agreement are for convenience in reference only and shall not define or limit the scope of any provision. There are no third-party beneficiaries to this Agreement. In the event of a conflict between the text of this Agreement and an exhibit or appendix hereto, the exhibit or appendix shall control.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITY OF ELKO

CONCESSIONAIRE

CHRIS JOHNSON, MAYOR

By:_____

ATTEST:

Title:_____

SHANELL OWEN, CITY CLERK