RESTAURANT SERVICES OPERATING AGREEMENT

THIS AGREEMENT, by and between CITY OF ABILENE, TEXAS, a municipal corporation principally situated in Taylor County, ("City") and, _____("Company") a corporation existing under the laws of the State of TEXAS whose address is listed in Section 17.2.

W I T N E S S E T H:

WHEREAS, City controls, owns, operates, and maintains an airport in the City of Abilene, Taylor County, Texas known as the Abilene Regional Airport ("Airport"), with the power to grant rights and privileges with respect thereto, and

WHEREAS, Company is engaged in the business of operating Food and Beverage facilities as a service to the traveling public, and

WHEREAS, proposals were received for the operation of a food and beverage concession at the Airport pursuant to a Request for Proposals and the specifications contained therein, and Company was the company selected by this process and determined to be qualified to operate the concession, and

WHEREAS, City, on the terms and conditions herein contained, is willing to grant to Company the non-exclusive right to operate the food and beverage concession at the Airport Terminal;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, City and Company agree as follows:

SECTION 1
DEFINITIONS

Section 1.1 Definitions. The words and phrases defined in Section 1 shall have the following meanings when used elsewhere in this Agreement.

(a) **Agreement** means this Food and Beverage Concession Agreement between City and Company, as the same may be amended or supplemented from time to time pursuant to the terms hereof, which shall include the City's Request for Proposal and Company's response to said Request for Proposal, which is attached hereto and made an integral part hereof.

(b) **Airport** means the Abilene Regional Airport.

(c) **City** means the City of Abilene, a municipal corporation.

(d) **City Property** means finishings, fixtures, furnishings and equipment acquired, installed and owned by the City, as listed in Exhibit III.

(e) **Commencement Date** shall mean the first day of the Primary Term of this Agreement, which shall be the date of execution by the City Manager of the City of Abilene, following execution by company, and shall be the effective date of the agreement.

(f) **DBE** means Disadvantaged Business Enterprise as defined in 49 C.F.R. Part 23, subpart F, and shall include small business concerns which are owned and controlled by socially and economically disadvantaged individuals which shall include Small Business Administration ("SBA"), Section 8(a) certificate holders.

(g) **Director** shall mean the Director of Transportation Services (Director) of the City, or the designee of the Director whenever the Director is unable to act in such capacity.

(h) **DOT** means the United States Department of Transportation or any department of agency succeeding to its jurisdiction and function.

(i) **EPA** means the United States Environmental Protection Agency and any federal, state or local agency, or governmental entity, succeeding to, or being delegated with, its jurisdiction, functions, or responsibilities.

(j) **FAA** means the Federal Aviation Administration of the United States Department of Transportation, or any department or agency succeeding to its jurisdiction or function.

(k) **FAR** means Federal Aviation Regulations and shall include, but not be limited to, all regulations, policies, statements and directives promulgated or issued by the FAA.

(l) **Finishes** means those improvements to the Leased Premises installed by Company, including counters, partitions, carpeting, wall coverings, counters, heating, plumbing, ventilation, and air conditioning duct work and controls, ceilings, lighting and power fixtures, wiring, accessories and parts necessary to bring power to the Leased Premises.

(m) **Fiscal Year** shall mean City's fiscal year meaning the twelve (12) month period commencing October 1 and extending to September 30 of the following year.

(n) **Governmental Requirements** means all federal, state and local laws, rules, regulations, security plans, and rulings, including all amendments, now in effect or hereinafter enacted.

(o) **Expendables** shall mean commodities, supplies, glassware, dishes, utensils and consumable items.

(p) **Leased Premises** means the area or areas designated on Exhibit "A" attached hereto as the place or places within the Airport where concessions are located.

(q) **Leasehold Improvements** means all improvements and equipment which are affixed to the Leased Premises and which cannot be removed without material damage to the Leased Premises.

(r) **Minimum Annual Guarantee** if applicable, means the annual minimum guarantee payable monthly by Company to City subject to each and every term and condition contained in this Concession Agreement. In the event of a partial month, the monthly portion of the Minimum Annual Guarantee shall be prorated based on the number of days during the month that this agreement was in effect.

(s) **Personal Property** shall mean all movable property of the Company not directly related to the restaurant operations of the privileges granted hereunder, including office furniture, office equipment, and office supplies.

(t) **Term** shall mean the fixed term commencing no later than sixty (60) days after the commencement date, or upon the opening of operations for business, whichever occurs earlier.

(u) **Refurbish** or **Refurbishment** shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, fixtures or finishes. Refurbishment shall not mean the performance of routine or deferred maintenance.

(v) **Request for Proposal** means City's Request for Proposal for Food, and Beverage Concession for the Abilene Regional Airport, #CB-1214 dated February 14, 2012.

(w) **Terminal Building** means the Passenger Terminal Building at the Airport, as it exists on the date hereof, and any additions made thereto during the term of this Agreement.

(x) **Trade Fixtures** means all non-affixed items that are not City property, except Expendables, Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures and the like.

(y) **TSA** shall mean Transportation Security Administration of the United States Department of Homeland Security, or any department or agency succeeding to its jurisdiction or function responsible for providing personnel

and equipment to screen passengers, baggage and goods at the Airport and enforcing federal transportation security regulations.

Section 1.2 Rules of Construction. Throughout this Agreement, unless the context clearly shall require otherwise

The singular includes the plural and vice versa;

(b) The words "and" and "or" shall be both conjunctive and disjunctive;

(c) The words "hereby", "herein", "hereof", "hereto" and "hereunder" and any similar terms used in this Agreement refer to this Agreement;

(d) The words "all" and "any" mean "any and all";

(e) The word "including" shall not mean in a limiting nature, but shall be construed to mean "including without limitation";

(f) The word "he" or any other masculine pronoun includes any individual regardless of gender;

(g) Words denoting persons shall include firms, associations, partnerships, limited liability corporations, limited liability partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(h) Reference to any attachments or exhibits shall mean exhibits attached to this Agreement which shall be deemed incorporated fully by reference and made an integral part of this Agreement; and

(i) Any headings preceding the text of the Articles, and Sections of this Agreement and any Table of Contents or marginal notes appended to notes hereof shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction, interpretation or effect of this Agreement.

(j) Reference to articles or sections respectively shall mean articles or sections of this Agreement.

SECTION 2
TERM

Section 2.1 Term . This Agreement shall become effective on _____ and shall continue unless sooner terminated in accordance with this Agreement until _____.

Section 2.1(a.) Option Periods. Upon 60 written days' notice prior to the expiration of the preceding term, and with the mutual agreement between City and Company, this Agreement shall have two (2) one-year extensions.

Section 2.2 Holding Over. To provide continuous service to the air traveler and public, Company may, upon written request of City, remain upon the Leased Premises and manage the operation of all concessions subject to this Agreement for up to a one hundred eighty (180) day period, as so requested by City, after termination of this Agreement by expiration of the Term, cancellation or default, to give a new company sufficient time to be chosen and commence operation. Upon the termination of this Agreement, through the passage of time or otherwise, Company shall aid City, in all ways possible, in continuing the business of management of the operation of the facilities subject to this Agreement without interruption, between termination of this Agreement and commencement of operations by a new company.

In the event that Company, without request or objection by City, shall continue to occupy the Leased Premises beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only upon the terms incorporating all terms and conditions of this Agreement; except provided, however that, at City's option, the Minimum Annual Guarantee shall be equal to the last Minimum Annual Guarantee paid to City, increased by Consumer Price Deflator Index published by the U.S. Department of Labor, as may be selected by City. The Company will continue to pay rentals using the adjusted Minimum Annual Guarantee and the payment structure defined in Section 5 hereof. No such holdover shall be deemed to operate as renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Company by giving thirty (30) days' written notice of said termination to the other party at any time. Company will have no rights to renew or extend the term of this Agreement.

SECTION 3
LEASED PREMISES

Section 3.1 Leased Premises. For and in consideration of the mutual covenants contained herein, City hereby provides Company approximately **1,982** square feet of restaurant operating space hereinafter called "Leased Premises", as set forth on **Exhibit A**.

For purposes of this Agreement relating to Company's responsibilities, the Leased Premises shall mean the areas shown on **Exhibit A** where (a) the exact boundaries are deemed to be three (3) inches inside each wall separating the Leased Premises from the adjacent premises or the external Terminal wall, and (b) with respect to the facade and/or wall on the front of the Leased Premises, separating the Leased Premises from the Terminal common areas, the exact boundary is deemed to be the external face of the facade and/or wall.

In addition, and with the written approval of the Director, kiosks, tables and similar facilities may be located in other public areas of the terminal if doing so is warranted

for enhanced customer service, and does not interfere with other terminal and passenger flow activities.

The area and location may from time to time be adjusted as hereinafter provided and subsequently illustrated on a revised **Exhibit A**.

Section 3.2 Extent of Leasehold. In addition to the exclusive use of the Leased Premises described in Section 3.1 above, Company shall possess the non-exclusive right of ingress and egress to and from the Leased Premises as may be necessary on through areas designated by the Director, subject to Airport rules and regulations, including security regulations, as may be amended from time to time, provided that Company's exercise of such right shall not impede or interfere unduly with the operation of the Airport by City, its tenants, customers and other authorized occupants. Company shall not place or install any racks, stands or other display of merchandise or trade fixtures in any Airport property outside the Leased Premises without the express prior consent of the Director. In no event will Company engage in any activity on the Airport outside the Leased Premises for the recruitment or solicitation of business.

Section 3.3 Remeasurement of Leased Premises. At any time and from time to time, the Director may cause City to conduct a space audit pursuant to which City remeasures the Leased Premises, using the Airport's then current measurement specifications. At the Director's request, Company and City shall enter into an amendment of this Agreement reflecting the results of such remeasurement.

Section 3.4 Changes to Airport. Company acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building and this Leased Premises, at the City's discretion (b) City has made no representations, warranties, or covenants to Company regarding the design, construction, pedestrian traffic, or views of the Airport or the Leased Premises. Without limiting the generality of the foregoing, Company acknowledges and agrees that the Airport (i) is currently undergoing and may from time to time hereafter undergo renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Company's business. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although City will use reasonable efforts to minimize the effect of Airport changes on Company's business, Company acknowledges that such activity may have some effect on the Company's food and beverage operations located at the Airport, and Company shall not be entitled to any rent credit or other compensation therefor.

At any time and from time to time, City may, without the consent of Company, and without effecting Company's obligations under this Agreement, at City's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion of the Airport, including without limitation the concourses,

boarding areas, and restaurant areas and security areas located within the Terminal Building, (b) build additional stories above or below the Airport buildings, including the Terminal Building, (c) eliminate or relocate public entrances to the Leased Premises so long as there is at all times one public entrance to the Leased Premises, (d) construct multi-level, elevated or subterranean parking facilities and (e) expand or contract the Airport, including redefining the Airport boundaries so as to include additional lands within the Airport or exclude lands from the Airport or both. Without limiting waivers set forth elsewhere in this Agreement, Company hereby waives all claims against City and releases City from all losses that Company suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Company further agrees that Company will not be entitled to any rent abatement or any other rent relief in connection with any changes to the Airport or any portion of the Airport.

Section 3.5 Common Areas. The term "common areas" means all areas and facilities located within the Airport that are determined by City from time to time for the general use and convenience of the tenants of the Airport and other occupants of the Airport and the traveling public and other visitors to the Airport such as concourses, sidewalks, elevators, escalators, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways. City may, in its sole discretion, and without any liability to Company (a) change the common areas, (b) increase or decrease the common areas (including conversion of common areas to leasable areas and the conversion of leasable areas to common areas) and (c) impose parking charges. City will, in its sole discretion, maintain the common areas, establish and enforce Airport rules and regulations concerning the common areas, close temporarily portions of the common areas for maintenance purposes, and make changes to the common areas including changes in the location of security check points, driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic.

SECTION 4
USES AND PRIVILEGES

Section 4.1 Concession Rights Granted. For and in consideration of the prompt payment of the compensation to City as hereinafter provided, City hereby grants to Company, subject to all of the terms, covenants and conditions of this Agreement, the

Terminal Building right and obligation to operate and maintain the restaurant services operation.

Due to Company operating days and hours anticipated to be less than the full days and hours the terminal is open to the public, the City maintains the right to place beverage and food vending machines in the terminal at its discretion.

Company shall enjoy the following privileges in connection with its use of the Leased Premises:

(a) The right, privilege, and obligation to conduct and operate a Terminal Building restaurant services operation at the Airport. Company shall not engage in any other business on the Airport under this Agreement.

(b) The right, privilege and obligation to sell food, alcoholic and non-alcoholic beverages to passengers, employees and the general public and to cater airline and private aircraft food and beverage needs, as well as meetings and special events taking place on airport, in accordance with the terms and conditions outlined herein. Company shall sell food and beverages only in accordance with the terms of this Agreement.

(c) (d) If space is available, and at the sole option of City, Company may lease additional storage and office space identified by City as available for such purposes, at an annual rate to be paid monthly in an amount at least equal to the then current rate on a per square foot basis for similar or equivalent space.

Section 4.2 Operational Assurances and Requirements.

(a) Company shall pay to the City a refundable deposit of $500.00 prior to occupying leasehold. Deposit will be held to cover cleaning, repairs to leasehold and missing City-owned property should Company vacate without returning leasehold to the satisfaction of the Director.

(b) **Approval of Menus.** Company shall not conduct any other business, or sell any type of food and beverage products unless specifically authorized to do so by the Director. Company shall be permitted to sell those menu items outlined in **Exhibit B**, attached. Changes to the menu and prices shall be submitted to the Director for his review and written approval prior to the change. City will respond to such requests for authorization within a reasonable time not to exceed five (5) business days. This does not apply to menus for catering, meetings and special events, which are for private use only and not for public consumption.

(c) **Development of Food and Beverage Business**. At the location(s) indicated herein, Company shall provide food and beverage service every day of the term hereof, without exception. Company shall not divert, cause or permit to be

diverted any business from the Leased Premises without the written approval of the Director. Such approval shall be subject to fees for non-airport use of airport facility and equipment. It is acknowledged that Company may operate a catering service from its Airport leasehold. Such catering revenue shall be accounted separately and the City will be paid a commission on all such catering revenues per **Section 5**. Company shall take all reasonable measures, in every proper manner, to develop, maintain and increase the business conducted by it under this Agreement. Company shall actively operate each food and beverage facility so as to best serve the needs of the traveling public at the airport.

(d) **Advertising and Promoting of Products.** Company may advertise brand-name products on its packaging and within the Leased Premises only upon the written approval of the Director. City will respond to such requests for authorization within a reasonable time not to exceed five (5) business days. Receipts for any such advertising or promotion, if any, shall be subject to fees as described in Section 5 hereof. This does not pertain to the advertisement or promotion of food and beverages sold in the leased premises.

(e) **Dispute with Other Tenants.** In the event of a dispute between Company and any other Airport tenant as to the services to be offered or products to be sold, Company shall meet and confer with the Director, who shall consider the rights and obligations set forth in the tenants' Agreements with the City and make a determination. Company agrees to that it shall be bound by the decision of the Director.

(f) **No Other Uses.** Company shall not use nor permit the Leased Premises to be used for any purpose other than as herein above set forth except with the prior written consent of City, nor for any use in violation of any applicable present or future law, ordinance, rule or regulation of any governmental authority, agency, department or officer thereof.

(g) **Purchasing.** The Company shall have the right to purchase Personal Property or services, materials and supplies used by Company from any person or company of Company's choice. The Company shall have the right to make agreements with any person or company of Company's choice for services to be performed for Company which are incidental to the conduct of Company's activities. It is understood that if Company's suppliers, contractors and furnishers of service exclusively use any portion of the Airport or facilities of City, then City may charge reasonable fees therefore, but nothing herein gives the Company the right to grant to any other party the privilege to use any portion of the Airport or facilities of City.

(h) **Disposal of Equipment**. The Company may dispose of equipment, which is not City property, and which has been replaced or fully amortized, or which is

unnecessary; provided, that such right shall not be construed as authorizing the conduct of a separate business.

(i) **Employees' Parking Facilities.** If not otherwise provided, Company shall have the right to the use of reasonably adequate vehicular parking facilities for its employees employed at the Airport in common with other employees, which facilities shall be located in an area designated by the Airport Director as near as practicable to the Terminal Building. Only employees assigned to the Airport shall use the Terminal Building employee parking facilities. City reserves the right to assess a reasonable charge for such employee parking facilities, based on the cost of providing, operating, and maintaining the facilities as set forth on City's published schedule of Airport rates, fees and charges.

(j) **Access.** (1) Subject to the provisions hereof, the rules, regulations, and ordinances, and such restrictions as Company may impose with respect to its Leased Premises, City hereby grants to Company, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of access, ingress, and egress to the Leased Premises and to public areas and public facilities of the Terminal; (2) The ingress and egress provided for above shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Company that Company is not authorized to engage in or perform under the provisions hereof unless expressly authorized by City; (3) City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Company's use pursuant to this Agreement or otherwise, either temporarily or permanently; provided that reasonable notice to Company and a reasonably convenient and adequate means of access, ingress and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Company's obligations under this Agreement

(k) **Company must maintain, at minimum, a state-issued Beer and Wine Permit at all times and provide such beverages for sale at all times as permitted by such Permit. However, the Director may suspend this requirement, if deemed in the interest of the City.**

(l) **Pest Control.** Company is responsible for maintaining monthly scheduled licensed pest control.

(m) **Grease Trap.** Company is responsible for cleaning the grease pit and ensuring proper disposal of removed grease.

Section 4.3 No Joint Venture or Partnership. This Agreement shall not be deemed or construed (a) to create any relationship of joint venture or partnership between City and Company, (b) to give City any interest in the business of Company,

or (c) to grant to Company any powers as an agent or representative of City, the Authority, or the City for any purpose or to bind City, the Authority, or the City.

SECTION 5
COMPENSATION, BOOKKEEPING, AND AUDIT

Section 5.1 Compensation

(a) Rent. EFFECTIVE [redacted] - As consideration for the privilege of operating the restaurant hereunder, Company shall pay to the City each year, for the full term of the Agreement, $ [redacted] in monthly installments of $ [redacted]. (Rent to be Negotiated)

(b) Other Fees and Charges. Notwithstanding the above, City expressly reserves the right to assess and collect the following:

1. A reasonable fee payable by Company or its Terminal Building employees for the employee parking area(s) provided at the Airport.

2. Charges for other services or facilities not enumerated herein which are provided by City to Company, at Company's request, except as provided in Section 7.2. Such services or facilities may include, but are not limited to, special maintenance of Leased Premises. Charges will be based on the actual cost of providing such facilities or services.

3. Catering Commission – Company shall separately account and report all on-site and off-site catering and shall pay a commission of _____% on such gross sales.

Section 5.2 – Gross Receipts Defined

As used herein, the term "Gross Receipts" shall include all revenue derived from the sale of products, services, merchandise and all revenue transactions from Leased Premises, whether delivered on or off the Airport, and whether paid for in cash or credit, and regardless of when or whether paid for or not, except only as explicitly excluded hereunder. Excluded from Gross Receipts shall be:

a) Federal, state, county, and municipal sales taxes or other taxes separately stated and collected from customers;

b) Actual credit card transaction fees not to exceed three percent (3%) for any given transaction;

c) Receipts from the sale of or the trade-in value of any Trade Fixtures;

d) Receipts from, the value of, or the sale of, any supplies or equipment to another operation or affiliate of Company, whether or not located at the Airport; provided such sale is incidental to or not made for the purpose of circumventing the fee provisions of this Agreement.

e) Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;

f) Cost or value of meals provided without charge to employees of Company or the amount of any discount ,if any, given to Airport employees, employees of Company or employees of other tenants of the Airport;

g) The amounts of any gratuities paid or given by patrons or customers to employees of Company, so long as such gratuities are voluntary and not included in the invoices to such patrons or customers.

h) Receipts from the sale of uniform or clothing to Company's employees whether such uniforms or clothing are required to be worn by said employees.

Except as herein above specified, if any charge for any of the products or services provided hereunder is not assessed, charged, or collected, irrespective of the reason therefore, the proper amount of such charge shall, nevertheless, be included in the term "Gross Receipts" as the same is used in this section. Further, no deduction shall be made from Gross Receipts by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other charge or charge arrangements.

Section 5.3 – Statements, Books and Records.

Within ten (10) days after the close of each calendar month of the term of this Agreement, Company shall submit to City, in such detail and form as may be specified by City, certain information, including but not limited to, a statement of its Gross Receipts during the preceding month said statement to be signed by a responsible accounting officer of Company. Said statement shall include, at a minimum, a breakdown of Company's sales at each location for food and beverages. City reserves the right to change the form of the monthly statement and to require the submission by Company of other information pertaining to the Gross Receipts hereunder, and Company agrees to change the form of its statements to that requested by City and to provide any additional information City may request.

Section 5.4 Late Fees on Overdue Payments

Any payment not received from Company within ten (10) days after the due date shall accrue a late fee at an interest rate of one percent (1.0%) per month, beginning with the original due date until paid in full, subject to a minimum late fee of twenty-five dollars ($25.00).

SECTION 6
IMPROVEMENTS AND EQUIPMENT IN LEASED PREMISES

Section 6.1 Improved Space. The Leased Premises is provided by the city fully finished and equipped for typical food and beverage services operation.

Section 6.2 Alterations and Improvements. Company shall not install or erect additional, nonstructural improvements in the Leased Premises, or alter, change, or make other improvements unless and until plans and specifications for such additional alterations or improvements shall have been submitted to and approved in writing by Director. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Director before any work or construction is commenced. Any such alterations or improvements shall be without cost to City, except as provided in Section 6.3 below. All structural improvements, equipment and interior design and decor constructed or installed by Company, its agents, or contractors, including the plans and specifications, shall be of attractive construction and first- class design and shall comply with any and all applicable statutes, ordinances, building codes, and rules and regulations. City shall make its architect for the Terminal Building available for coordination on design matters.

Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reject any layout or design proposals submitted and to require Company to submit any such layout or design proposal until they meet City's approval.

One reproducible final copy of the as-built plans for all improvements or subsequent changes therein or alterations thereof to the Leased Premises shall be signed by Company and submitted to the Director within thirty (30) days following completion of any project. These plans, and any subsequent modifications or alterations, shall also be furnished to City on computer discs as electronic files in a format compatible with the CAD system used by City.

Section 6.3 Title, Removal, and Demolition of Improvements. All permanent improvements, additions and alterations made to the Leased Premises and any items on **Exhibit C** purchased from the allowance provided in Section 6.3 by Company shall upon installation become the property of City free and clear of liens or encumbrances; provided, however, that any Trade Fixtures, signs and other Personal Property of Company not permanently affixed to Leased Premises shall remain the property of Company. Should Company fail within twenty (20) business days following the

termination of this Agreement to remove its Trade Fixtures, signs and other Personal Property of Company not permanently affixed to Leased Premises, then at the option of City, title to same shall vest in City at no cost to City.

Company shall not remove or demolish, in whole or in part, any improvements upon Leased Premises without the prior written consent of the Director. Company understands and agrees that consent may be conditioned upon the obligation of Company to replace the same by an improvement specified in such consent at Company's sole expense.

SECTION 7
MAINTENANCE

Section 7.1 City's Obligations in Terminal Building.

(a) City shall provide structural maintenance of the Terminal Building and maintenance of electrical, heating, ventilating and air conditioning systems providing services to the leased premises.

(b) City will at all times maintain, operate, and keep in good repair the Terminal Building, and all appurtenances, facilities, and services now or hereafter connected thereto.

Section 7.2 Company's Obligations in Terminal Building.

(a) Except for structural maintenance of the Terminal Building, as provided in Section 7.1, Company shall be obligated, without cost to City, to maintain the Leased Premises in good appearance, repair, and safe condition consistent with good business practices, industry standards and in accordance with all applicable laws and rules and regulations of the City. Company shall maintain and repair all Leasehold Improvements and all furnishings, fixtures, and equipment therein, whether installed by Company, the City or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures or furnishings. All such maintenance and repairs shall be of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Director. Company shall be responsible for such repairs to City-owned equipment up to Five Hundred dollars (**$500**) in cost. City shall be responsible for any repairs to City-owned equipment which exceeds Five Hundred dollars ($500) with the exception that any damage resulting from Company's or its employee's or agent's abuse or neglect shall be the full responsibility of Company.

(b) Company shall be responsible for collecting and transporting all trash to City designated trash containers in a manner satisfactory to the Director.

(c) If City determines that maintenance of the Leased Premises is not satisfactory, City shall so notify Company in writing. If said maintenance is not performed by Company within fifteen (15) days after receipt of written notice, City or its agent shall have the right to perform the maintenance therefor and Company agrees to reimburse City promptly for the cost thereof, plus ten percent (10%) thereof for administrative overhead.

(d) Upon execution of this Agreement, Company shall establish a preventive and routine maintenance program, the provisions of which shall be subject to the approval and periodic review by the Director. Company shall from time to time, upon request, provide the Director a written schedule of Company's cleaning and maintenance program.

(e) On or about the commencement of each calendar year, representatives of City and Company shall tour the Leased Premises and jointly agree upon what, if any, routine Refurbishment is required to maintain the Leased Premises in first-class condition, and Company shall undertake such Refurbishment at its sole cost and expense. If Company and City cannot jointly agree upon the type and extent of Refurbishment, City may at its sole discretion determine the Refurbishment required.

(f) Upon discovery, Company shall immediately give oral and written notice to City of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be removed and disposed of immediately in accordance with local, state and federal regulations. At the direction of the Director or Health Department, Company shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.

(g) Company agrees to employ sufficient maintenance and janitorial personnel, and provide necessary equipment, to keep the Leased Premises and all furniture, furnishings, fixtures and equipment clean, neat, safe, sanitary and in good working order and condition at all times.

(h) Company shall, at its cost, comply with all fire suppression, health and sanitary regulations, inspections and maintenance adopted by all applicable governing bodies and all rules and regulations promulgated by the City. Company shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to the Director and Company shall promptly give a copy of any reports to the Director.

SECTION 8
OPERATIONS OF LEASED PREMISES

Section 8.1 – Hours of Operation. Company shall actively operate its restaurant operation in and use its best efforts to accomplish a business-like operation therein. The restaurant shall be open to serve the public Sunday through Friday with the exception of Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day, July 4th and Labor Day , unless otherwise authorized in writing by the Director. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Company may advise the Director of Company's analysis of the optimum arrangements, but the final determination shall be made by the Director based on an analysis of necessary service to the public. No facilities shall be blocked off or closed at any time during the approved hours of operation.

Section 8.2 – Delivery of Goods. Company shall arrange for the timely delivery of all food products, goods, merchandise, and supplies, at such times, in such location(s), and by such routes as determined by the Director and according to such procedures that may be established from time to time by the Director and, in the case of deliveries to higher security areas, the Transportation Security Administration.

Section 8.3 Utilities. The cost of all utilities, excluding phone and data, used or consumed in the Leased Premises shall be borne by the City.

Section 8.4 Personnel. All personnel employed by Company shall be neat, clean, groomed and courteous at all times. Company shall employ sufficient trained personnel to staff and meet the reasonable needs or demands of patrons. Personnel shall be thoroughly qualified, familiar with the business, the products sold, courteous, informative and helpful to the public.

(a) **Removal of Employees**. After receipt of written notice from City, Company shall immediately remove any employee or other representative of Company from the Airport who participates in improper or illegal acts on the Airport, who violates Airport rules and regulations or any provision of this Agreement, or whose continued presence on the Airport is, in the opinion of the Director, deemed not to be in the best interests of City.

(b) **Conduct of Suppliers, Others.** Company shall not allow its agents, servants, contractors, suppliers or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner. Company shall ensure that all personnel treat all patrons equally and courteously.

(c) **Lawful Working Age.** All employees or other personnel of Company working on City property shall be of lawful working age. Company shall comply with all federal, state and local labor and employment laws, including laws and regulations relating to the handling, sale, and serving of alcoholic beverages.

(d) **Employee Appearance.** Company shall ensure that its employees present a neat, clean, and orderly appearance at all times.

(e) **Security Background Checks.** Employees of Company providing services in secured areas of the Terminal Building must qualify for a security clearance, submit to the required fingerprinting and background check, and obtain appropriate security badges, at Company's expense, and otherwise comply with security regulations that may be established by the City and the TSA from time to time. Personnel who are refused security clearance shall not be permitted by Company to perform work in the secured areas of the Airport.

(f) **General Manager.** Company shall select and appoint a qualified general manager with day-to-day responsibility for the food and beverage concession. The management employee shall be in complete charge of Company's operation at the Airport and shall be a qualified and experienced manager vested with full powers to conduct Company's operation hereunder. The management employee shall be available during regular business hours; and at all times during his/her absence, a designated representative of the Company shall be in charge and available. City shall have the right to approve the appointment of Company's general manager prior to assignment to the Airport.

Section 8.5 – Quality and Character of Service.

(a) **Type of Operation.** Company shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgement of City, does not annoy, disturb, or offend others at the Airport. Company shall ensure that each customer receives prompt, efficient and courteous service. In conjunction with that requirement, Company shall ensure that the operation has adequate staff to provide such service. Company shall ensure that all locations are adequately staffed during normal peak operating hours and during any special or emergency situation. Company shall conduct its business in the manner described in the Company's Proposal, incorporated herein by reference.

(b) **Quality of Food.** Company shall supply sufficient goods and product to fully stock its Leased Premises. All foodstuff must be new, fresh, and of top quality. Branded food and beverage units will, at a minimum, conform to the requirements established by the franchisor or licensor.

(c) **Pricing.** The Company has covenanted in the Company's Proposal to charge prices that are reasonable and comparable to prices charged for similar items in similar facilities in the Abilene area. The Airport reserves the right to verify, approve or reject the prices and/or comparables used by the company. Comparable facilities shall mean food and beverage facilities offering similar service, quality, and quantity of offerings, including shopping malls or downtown

locations. Comparable facilities shall not include special event venues, seasonal festivals, fairs and sporting events, or hotels and convention centers.

(d) **Director's Right to Object.** The Director shall have the right to raise reasonable objections to the condition of the Leased Premises, the quality and quantity of food and beverage offered, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to said Director to be remedied by Company.

(e) **Services Nondiscriminatory.** Company shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable and nondiscriminatory prices; provided, however, that Company may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may deem necessary to encourage customer acquisition and loyalty.

(f) **Replacements and Refunds.** Company may, at all times during the term of this Agreement, and without any additional charge to customers, replace any food or beverage product by said customer to be unsatisfactory, or shall provide said customer a full refund therefor.

(g) **Credit/Debit Cards.** At all times during the term of this Agreement, Company shall accept as payment for goods and services of all nationally recognized credit/debit cards (e.g., American Express, Master Card, Visa, etc.). Company is encouraged to accept Apple and other mobile device payment methods.

(h) **General Public Services.** Company understands and agrees that its operation at the Airport obligates it to render public services such as making change upon request and without charge, giving directions, and reasonably assisting the public, when requested.

(i) **Additional Compliance.** Company shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

Section 8.6 – Signs.

(a) **Right to Install.** Company shall have the right to install and operate upon or in the Leased Premises, and at Company's sole cost and expense, signs containing its name and representing its business. Company acknowledges City's desire to maintain a high level of aesthetic quality in the Terminal Building and in all concession facilities throughout the Terminal Building. Therefore, Company covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Leased Premises, it will submit to City the size, design, content, and intended location of each and every sign it proposes to install on or within the Leased Premises, and that no signs of any type shall be installed on or within the Leased Premises without the specific prior written approval of Director as to the size, design, content, and location. Neon, handwritten, or hand lettered

signs are prohibited. Notwithstanding any prior written approval, upon written notice from the Director at any time during the term of this Agreement, Company shall install, remove, or modify any signs which the Director deems necessary or unnecessary for identification or information to the public, passengers, or other Airport users. Failure to require removal of any sign placed on or about the Leased Premises without written permission shall not imply consent or limit the authority of the Director to require removal of any unapproved sign.

(b) **Signs and Fixtures Outside Premises**. Company shall not place or install any racks, stands, and trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Director.

(c) **Removal of Signs.** Upon the expiration or sooner termination of this Agreement, Company shall, if requested by the Director, remove any and all identification signs and similar devices placed by Company on or in the Leased Premises. In the event of the failure on the part of Company to so remove each and every sign as requested by the Director, the Director may perform such work and, upon demand, Company shall pay the cost thereof to City.

Section 8.7 - Security. Company acknowledges and accepts full responsibility for the security and protection of the Leased Premises and any and all inventory, equipment, and facilities now existing or hereafter placed on or installed in or upon its Leased Premises, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all rules and regulations of the Airport and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. Company further expressly acknowledges and accepts full responsibility to maintain the integrity of the airfield security from or through the leased premises to the airfield operations area, and hereby agrees to fully comply with all Federal, State and local laws, including, but not limited to 49CFR Part 1542, Airport Security, as amended from time to time, and with all rules and regulations of Airport concerning security procedures, as they presently exist or may be amended from time to time.

SECTION 9
LICENSES AND TAXES

Company covenants and agrees to obtain all proper licenses or permits for the operation of its business hereunder, and to pay all taxes assessed or imposed by any governmental authority upon the fees, rentals, and charges and upon any improvements erected or installed thereon. Company shall, after notifying City of its intention to do so, have the right to contest in good faith by all appropriate proceedings, the amount, applicability, or validity of any such tax or assessment. In the event that Company shall fail to pay any of the foregoing items required by this Section, City may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by City shall become an additional obligation of Company, which amounts, together with interest thereon at the rate of one percent (1.0%) per month from the

date thereof, Company agrees to pay upon demand. The foregoing provision shall in no way be construed as restricting City from contesting the legality of any such tax or other governmental assessment.

SECTION 10
LIENS, PAYMENTS AND PERFORMANCE BONDS

Construction Surety Bond. Company shall not allow any liens to attach to the Leased Premises or its leasehold interest without the prior written approval of City. Prior to the commencement of any construction, alteration, or repair hereunder which exceeds twenty-five thousand dollars ($25,000) in cost, Company or its contractor shall furnish to City, and without expense to City, a surety bond, naming City as co-obligee, issued by a surety company licensed to transact business in the state of Texas and satisfactory to and approved by City with Company's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of contract or contracts for the construction, alteration, or repair of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment of all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in said construction contract and shall protect City from any liability, losses or damages arising therefrom.

Section 11
Damage or Destruction of Leased Premises in Terminal Building

Section 11.1 Partial Damage. If all or a portion of the Leased Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenantable, the same will be repaired with due diligence by City subject to the limitations of Section 13.4; provided, however, that if the damage is caused by the negligent act or omission of Company, its sub-Lessee, agents, or employees, to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in such repair.

Section 11.2 Extensive Damage. If the damages referred to in Section 13.1 shall be so extensive as to render the Leased Premises untenantable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Section 13.4; and, the compensation payable herein under Section 5 shall abate from the time of such damage or destruction until such time as the said Leased Premises is fully restored and certified by City's Building Inspectors as ready for occupancy; provided, however, that if said damage is caused by the negligent act or omission of Company, its sub-Lessee, agents or employees, said fees and charges will not abate and, to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in such repair.

Section 11.3 Complete Destruction. In the event the Leased Premises is completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or so damaged that it is untenantable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and compensation payable herein under Section 5 shall abate as of the time of such damage or destruction until such time as the said Leased Premises is fully restored and certified by City's Building Inspectors as ready for occupancy; provided, however, that if said damage is caused by the negligent act or omission of Company, its sub-Lessees, agents, or employees, said fees and charges will not abate, and to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in said repair; provided further, however, if within twelve (12) months after the time of such damage or destruction said Leased Premises shall not have been repaired or reconstructed, Company may cancel this Agreement in its entirety.

Section 11.4 Limits of City's Obligations. It is understood that, in the application of the foregoing Sections 11.1, 11.2, and 11.3, City's obligations shall be limited to repair or reconstruction of the Terminal Building Leased Premises to the same extent and of equal quality as obtained at the commencement of operations. Redecoration and replacement of furniture, fixtures, equipment, and supplies provided by Company shall be the responsibility of Company and any such redecoration and refurnishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

SECTION 12
FEDERAL REQUIREMENTS

(a) Company, its successors in interest and assigns, does hereby covenant and agree that:

(i) No person on the grounds of race, color, national origin or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

(ii) In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, national origin or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

(iii) The Company shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Sub-title A, Part 21, Non-discrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(b) Company acknowledges and agrees that the provisions of all Federal-Aid Airport Program Grant Agreements with the City that are applicable to the Airport are by reference made a part hereof to the same extent as though copied herein at length.

(c) Nothing herein shall be deemed to grant Company any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.

(d) Company agrees to comply with the City's Disadvantaged Business Enterprise programs insofar as such programs are applicable to Company's operations on the Airport. Company acknowledges that the goals set forth in such programs shall be subject to change without notice to Company.

(e) Public Benefit. Company agrees to operate the Leased Premises for the use and benefit of the public and further agrees:

(i) To use reasonable efforts to furnish good, prompt and efficient services adequate to meet all the demands for its services at the Airport;

(ii) To furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof; and

(iii) to charge fair, reasonable and nondiscriminatory prices for each unit of sale or service, provided that the Company may make reasonable nondiscriminatory discounts, rebates or other similar types of price reductions for volume purchases

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

In accordance with Regulations of the U.S. Department of Transportation, 49 CFR Part 23, Subpart F, the City has implemented a Disadvantaged Business Enterprise (DBE) concession plan under which qualified firms may have the opportunity to operate an airport business. DBE firms are encouraged to submit proposals for this concession opportunity. Full ACDBE program available upon request.

As of proposal, the overall ACDBE goal is not required for concessions other than Car Rental concessions. Should the Airport ACDBE goal be changed, restaurant will be required to comply with the program goal requirements. Airport Staff will further explain this in detail if it becomes required reporting.

SECTION 13
RIGHTS AND OBLIGATIONS OF CITY

Section 13.1 Right of Flight. Company understands that the City reserves the right of flight for the passage of aircraft above the surface of the Leased Premises in accordance with the criteria of the Federal Aviation Administration and that the grant and demise of the Leased Premises is subject to this reserved right of flight, which such right shall include the right to cause in such air space such noise as may be inherent to the operation of aircraft now known or hereafter used for the navigation of or flight in the air. Further, Company understands and agrees that City reserves the right to use said air space for landing at, taking off from and operating aircraft on and over the Airport.

Section 13.2 Operation, Maintenance and Expansion of Airport by the City.

(a) The City agrees to operate, maintain and keep in good repair the areas and facilities at the Airport for the public and Company in accordance with the practices of a reasonably prudent airport operator. The City agrees to use reasonable efforts to keep the Airport free from obstructions and to do all things reasonably necessary for the safe, convenient and proper use of the Airport by those who are authorized to use the same. The City agrees to maintain and operate the Airport in accordance with all applicable standards, rules and regulations of the FAA.

(b) The City may expand and improve the Airport as it, in its sole judgment, may deem necessary to provide required facilities in the interest of the public and the City.

(c) The City shall have the right, but not the obligation, 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 Company in this regard.

SECTION 14
LIABILITY, INDEMNIFICATION, INSURANCE AND CONDEMNATION

Section 14.1 Liability. The City shall not be liable for its failure to perform any of the obligations under this Agreement or for any delay in the performance thereof, nor shall any delay or failure be deemed a default by the City when such failure or delay is the result of any cause beyond its reasonable control or jurisdiction. In any such case, a promptly written notice will be given by the City to Company of the existence of such cause and of readiness to resume performance upon the removal or termination thereof provided, however, that in every instance where the operation of the Airport and its facilities shall be wholly or partially suspended because of fires, storms, riots or acts of God, the City will proceed with due diligence and insofar as it has funds available to do so, to repair and restore the Airport and its facilities to such conditions as will permit its use and enjoyment as a commercial airport.

Section 14.2 Indemnification.

A. Definitions

For the purpose of this section the following definitions apply:
"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

(i) injury or damage to any property or right

(ii) injury, damage, or death to any person or entity

(iii) attorneys fees, witness fees, expert witness fees and expenses, and

(iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Company" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Company's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Company.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Company must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Company's work and activities conducted in connection with this Contract.

The Company is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Company must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Company or Company's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Company.

The City and Company must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Company or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND COMPANY EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE COMPANY TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

Section 14.3 Insurance.

(a) The Company shall provide and maintain, at its own expense, the following types and amounts of insurance, during the term of this Lease:

	TYPE	AMOUNT
(i)	Comprehensive General (Public) Liability - to include (but not	Combined single limit coverage (or equivalent)

	limited to) the following: a) Premises/operations b) Independent contractors c) Personal injury liability d) Contractual liability e) Product / completed operations liability f) Liquor Liability	for bodily injury and property damage: $1 million on a per occurrence basis
(ii)	Worker's Compensation and Employer's Liability	Statutory $100,000 per occurrence

The preceding amounts notwithstanding, the City reserves the right to increase the minimum amount required insurance to be effective 90 days after notice is sent to the address provided in Section 17.2 (or subsequent address provided in writing to the City, through its airport management designee.

(b) The procurement of said insurance shall not be construed to be a limitation upon the Company's liability or as a full performance on its part of the indemnification provisions of the Lease. The Company's obligations are, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the Leased Premises.

(c) Before commencement of activities under this Lease, the Company shall furnish to the City, certificates of insurance, plainly and clearly evidencing the required insurance, and thereafter, new certificates prior to the expiration date of any prior certificate. The Company understands that it is solely responsible to provide this necessary information. If the City notifies Company, in writing, that a violation of this article has occurred, Company will have 30 days to comply. If after thirty (30) days such violation has not been cured, this shall be considered a cause for cancellation of this lease, under the provisions of Section 15.

(d) Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the state of Texas. All policies shall be subject to examination and approval by the City's Risk Management office for their adequacy as to form, content, form of protection, and providing company.

(e) Insurance required by this Lease for the City, as additional insured, shall be primary insurance and not contributing with any other insurance available to the City, including any third party liability policy. The inclusion of the City as an additional insured is not intended to, and shall not make the City a partner or joint venturer with Company.

(f) The Company further agrees that with respect to the above-required insurance, the City shall:

(i) Be named as additional insured/or an insured, as its interest may appear;

(ii) Be provided with a waiver of subrogation; and

(iii) Be provided within thirty (30) days advance notice, in writing, of cancellation or material change.

(g) Said policies of insurance shall be performable in Taylor County, Texas, and shall be construed in accordance with the laws of the state of Texas.

(h) Protection against loss by fire or other casualty to the equipment or property of Company shall not be an obligation of the City.

Section 14.4 Insurance of the Leased Premises.

(a) Improvements. The Leased Premises shall be insured at all times during the term of this Agreement by Company for fire risks under a policy issued by a responsible insurance company. All such insurance policies on the Leased Premises shall name as insured thereunder the City and Company. Said insurance on a replacement cost basis, in an amount not less than fifty thousand dollars ($50,000), covering loss or damage to any buildings and/or improvements on the premises and premises contents owned or leased by the Company. The City of Abilene shall not be liable for any damages to fixtures, merchandise, or other personal property of Company, regardless of the cause, and the Company does hereby release the City from any such liability; and Company shall release and relieve the City, and waive it's entire claim of recovery for loss or damage to property arising out of any of the perils whether included in Company's property insurance, or not, regardless if the loss or damage is due to negligence of the City or the Company, or their respective agents, employees, guests, licensees, invitees, contractors or other persons.

(b) Reconstruct/Repair. In the event the Leased Premises or a substantial part thereof is damaged or destroyed by an insured casualty, Company shall at its sole cost reconstruct or repair the improvements and the insurance proceeds shall be applied to the reconstruction or repair of the improvement, the Company shall pay any deficiency between the cost of reconstructing or repairing the improvements to its state prior to such loss and the proceeds. The facilities shall be reconstructed or repaired, either in accordance with the original plans and specifications or in accordance with the new or modified plans and specifications jointly approved by the City and Company. Before any repair or reconstruction under this paragraph, Company shall submit plans and specifications to the City for approval.

SECTION 15
EVENTS OF DEFAULT AND REMEDIES

Section 15.1 Default by Company. The following shall be events of default as to the Company under this Agreement:

(a) Failure by the Company to pay any rent within thirty (30) days of the date it receives written notice from the City that such rent is past due.

(b) Failure by the Company to observe and perform any covenant, condition or agreement on its part to be performed other than as referred to in sub-section (a) for a period of thirty (30) days after receipt of written notice from the City specifying such failure and requesting that it be remedied.

(c) Abandonment or desertion of Leased Premises by the Company for any period of time exceeding thirty (30) consecutive calendar days or filing of any lien against the Leased Premises or Company's interest therein in violation of this

Agreement and shall remain unreleased for a period of sixty (60) days from the date of such filing unless within said period the Company is contesting in good faith the validity of such lien and while such lien is appropriately bonded.

(d) A receiver is appointed without Company's application or consent, in any action or proceeding by or against Company and such action or proceeding is not stayed or discharged within sixty (60) days after its commencement, or Company is involuntarily made a party to any insolvency proceeding conducted pursuant to the laws of any state or of a political subdivision of any state and such proceeding is not stayed or discharged within sixty (60) days after its commencement, or Company involuntarily becomes a debtor in any case commenced under the provisions of the United States Bankruptcy Code, as amended and such case is not stayed or discharged within sixty (60) days after its commencement.

(e) The dissolution or liquidation of Company or the filing by Company of a voluntary petition in bankruptcy or failure by the Company promptly to remove any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Leased Premises.

Section 15.2 Remedies on Default. Whenever any event of default referred to in Section 15.1 hereof shall have happened, the City may take any one or more of the following remedial steps as against the Company:

(a) The City may re-enter and take possession of the Leased Premises of Company without terminating this Agreement and sub-lease the interest of the Company to any party or operate the same on behalf of the Company. In either case, holding the Company liable for the difference, if any, between the rents and other amounts payable by Company hereunder and the rents and other amounts payable by such sub-leasing.

(b) After thirty (30) days' written notice to Company, the City may terminate this Agreement, exclude the Company from possession of the Leased Premises and shall use its best effort to lease Company's interest therein to another party for the account of City holding Company liable for all rents and other amounts due under this Agreement and not paid by such other party.

(c) The City may take whatever other action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due from Company or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement.

(e) If the City and the Company disagree with respect to Company's obligations to pay money under this Agreement, Company may pay the amount under protest and such payment shall not prejudice Company's right to recover the disputed

amount if it is determined that such payment was not due.

Section 15.3 :Non-Exclusive Remedy. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement.

Section 15.4: Legal Fees. In the event there should be a default under any of the provisions of this Agreement and the City should determine that the services of an attorney are required or the City incurs other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of Company, the Company agrees that it will on demand therefor pay to the City the reasonable, just and necessary fees of such legal and other reasonable incurred expenses.

SECTION 16
ASSIGNMENTS, SUBLETTING, TERMINATION AND ENCUMBRANCES

Section 16.1 Assignment and Subletting

(a) Company covenants and agrees that it will not sell, convey, transfer or assign this Agreement or any part thereof or any rights created thereby or sublet the Leased Premises covered by this Lease or any part thereof without the prior written consent of the Director provided, however, that Company shall have the right to assign its interest hereunder or to sublet the Leased Premises to any subsidiary, affiliate or successor company thereof upon the condition that the Company hereunder shall remain liable for the full, faithful and complete performance of this Agreement. Upon approval of the Director, Company may sublet the Leased Premises subject to Company and Sub-Company remaining liable for the full faithful and complete performance of this Lease both pre-assignment and post-assignment. Such approval will consider the effect such sale, conveyance, transfer or assignment will have on the continued performance of successor company under this agreement and its response to the request for proposal.

(b) If, without the prior written consent of the Director, the Company assigns, sells, conveys, transfers or sublets in violation of Section (a) of this Section or if the Leased Premises are occupied by anybody other than the Company, as provided in this Lease, the City may collect rent from any assigns, sub-Company or anyone who claims a right to this Agreement or who occupies the Leased Premises and the City shall apply the net amount collected to the rental herein reserved but no such collection shall be deemed a waiver by the City of the covenants contained in subdivision (a) of this Section or an acceptance by the City of any such assignee or sub-Company.

(c) Any assignment or transfer of this Agreement or any rights of Company hereunder (except as otherwise permitted herein) whether it be a voluntary assignment without the consent of Director or an assignment or transfer by operation of law, shall be null and void and shall constitute a default on the part of the Company.

Section 16.2 Termination by Company. If not in default in any of its obligations hereunder, Company may at its option terminate this Agreement by giving the Director thirty (30) days' written notice thereof if any of the following shall occur:

(a) The City shall fail to remedy any breach by it of any of the covenants and agreements herein contained within thirty (30) days after receipt of a written notice by the Company of the existence of such breach.

(b) To the extent within its reasonable control, the City fails, for a period of thirty (30) days after receipt of a written notice by the Company to remove any or take the reasonable steps to remove a condition of the Airport caused by the act or omission of the City and such condition results in Company's inability to conduct business operations at the Airport.

(c) The condemnation and taking by authority of eminent domain of the Leased Premises or any part thereof that substantially renders unusable the operation by Company of its authorized business at the Airport.

SECTION 17
MISCELLANEOUS

Section 17.1 Consents and Approvals

(a) With respect to the approvals herein required of the Company, Company shall from time to time furnish to the City appropriate certifications setting forth the officers or representatives of Company who are authorized to grant such approvals and to bind the Company thereto.

(b) The City's Airport Director may give any consent or approval herein required of the City unless otherwise provided.

(c) All consents and approvals required or permitted herein by either party shall be given in writing.

Section 17.2 Notices All notices required or permitted to be given to the City or Company shall be deemed sufficiently given if in writing and sent either by registered mail or certified mail, postage prepaid, addressed as follows, or to such other address or addresses as the City or Less

City: Company:

Director of Transportation Services
Abilene Regional Airport
2933 Airport Blvd., Suite 200
Abilene, Texas 79602

Section 17.3 Brokerage. The Company represents and warrants that no brokers have been concerned on their behalf in the negotiation of this Agreement and that there are no such brokers who are or may be entitled to be paid commissions in connection therewith. Company shall hereby indemnify and save harmless the City of and from any claim for commission or brokerage made by any such brokers when such claims are based in whole or in part upon any acts or omissions by Company.

Section 17.4 Force Majeure. Neither the City nor Company shall be deemed in default hereunder if either party is prevented from performing any of its obligations, other than the payment of rentals, fees and charges hereunder, by reasons of strikes, boycotts, labor disputes, embargoes, shortages of energy or material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, acts of sabotage or any other circumstances for which it is not responsible or which are not within its control.

Section 17.5 Entire Agreement. This Agreement constitutes the entire agreement between the City and Company.

Section 17.6 Lease to Federal Government. During time of war or national emergency, City shall have the right to lease the landing area or any part thereof the leased premises to the United States Government for military use and if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended but such suspension shall not extend the term of this Agreement, without written approval by the City.

Section 17.7 Place of Performance; Laws Governing Venue. This Agreement shall be performable and enforceable in Taylor County, Texas, and shall be construed in accordance with the laws of the State of Texas. Venue for any cause of action shall be Taylor County, Texas.

Section 17.8 Severability. Should any part of this Lease be held to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this Lease, which shall remain in full force and effect.

IN WITNESS WHEREOF this Agreement has been entered into and is effective as of the Effective Date and has been executed in quadruplicate original counterparts by the respective officers of the parties hereto as of the dates noted below.

City of Abilene, a Municipal Corporation

By:_____
Robert Hanna, City Manager

Date:_____

APPROVED:

_____
Stanley Smith, City Attorney

ATTEST:

_____
Shawna Atkinson, City Secretary

COMPANY NAME

By:_____
_____, Owner

Date:_____

ATTEST

_____