

CLT  
Kind Hospitality  
Panera  
A North

**SUBLEASE FOR FOOD AND BEVERAGE SALES**

**BETWEEN**

**HOST INTERNATIONAL, INC.**

**AND**

**KIND HOSPITALITY INC.**

**AT**

**CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT**

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Kind Hospitality  
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**SUBLEASE FOR FOOD AND BEVERAGE SALES  
AT CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT**

THIS SUBLEASE (“Sublease”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between HOST INTERNATIONAL, INC., a Delaware corporation (“Host”), and KIND HOSPITALITY INC., a Delaware corporation (Concessionaire”). THIS SUBLEASE MUST BE FULLY EXECUTED BEFORE CONCESSIONAIRE CAN TAKE POSSESSION OR HAVE ACCESS TO THE PREMISES DEFINED HEREIN.

**Recitals**

WHEREAS, Host is a principal concessionaire at the Charlotte Douglas International Airport (the “Airport”) pursuant to the Amended and Restated Concession Agreement by and between the City of Charlotte (“City”) and Host, dated October 14, 2016, and effective July 1, 2017 (which, together with any amendments thereto, is hereinafter referred to as the “Agreement”); and

WHEREAS, the Agreement amends and restates the prior existing concession agreement between the City and Host, dated on or about August 25, 2003 (the “Prior Existing Agreement”); and

WHEREAS, Host has established and upheld a reputation as a provider and operator of high quality concession facilities which has enabled Host to become a principal concessionaire at the Airport; and

WHEREAS, Concessionaire desires to be, and has been selected by Host and/or the City, to be the operator of a certain food and beverage facility at the Airport as hereinafter described (the “Premises”); and

WHEREAS, the parties desire to enter into this Sublease of the Premises upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Sublease and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

**1. Agreement.**

**1.01. Incorporation of Agreement.** A copy of the Agreement has been furnished to Concessionaire, and Concessionaire is aware of all the terms and conditions contained therein. The

Agreement is incorporated into this Sublease and this Sublease is subject to all applicable terms as set forth in the Agreement, as such may be amended from time to time. Concessionaire shall be subject to all the requirements, terms, covenants, conditions and restrictions with respect to the occupancy, operation, use and care of the Premises (as defined in Section 3 herein), and Concessionaire's conduct in the Airport which apply to Host pursuant to the Agreement. Concessionaire shall have no greater rights in the Premises than Host has under the Agreement. Except where the Agreement is silent on an issue, or where the terms of this Sublease are more stringent than those in the Agreement, in the event of any conflict between any term of this Sublease and any term imposed on Host by the Agreement, the Agreement shall be superior and control the outcome. Unless otherwise defined in this Sublease, the definitions set forth in the Agreement are incorporated herein and shall constitute the definitions of such terms as used in this Sublease.

**1.02. Subordination of Sublease.** This Sublease and all rights of Concessionaire hereunder are in all respects subject and subordinate to (i) the Agreement and to all of the terms, covenants and conditions thereof, and (ii) to all encumbrances now affecting the Agreement or the Premises or to which the Agreement is subject and subordinate. The foregoing provisions shall be self-operative and no further instrument of subordination shall be necessary, unless required by Host or City, in which event Concessionaire agrees, on demand, at any time or times, to execute, acknowledge and deliver to Host and/or City any and all instruments that may be reasonably necessary or proper to confirm the aforesaid subordination of this Sublease, and all rights of Concessionaire hereunder, to the Agreement and the lien of any such encumbrances.

**1.03. No Privity, Exercise of Rights and Remedies Under Agreement.** Nothing in this Sublease shall be construed to create privity of estate or of contract between Concessionaire and City. Concessionaire shall not have the right to exercise any of Host's options or elections permitted or authorized under the Agreement. Concessionaire shall have no rights or remedies against City for any default, failure or delay on the part of City in the performance of any obligations under the Agreement. Concessionaire shall not have the right to institute any action or proceeding against City for the enforcement of the Agreement. If City shall default in the performance of any of its obligations under the Agreement, Host shall, upon the written request of Concessionaire, use its diligent good faith efforts to enforce the Agreement to obtain City's compliance with its obligations thereunder. Except as otherwise specifically provided herein, Host shall have no duty to perform any obligations of City and shall under no circumstances be responsible or liable to Concessionaire for any default, failure or delay on the part of City in the performance of any obligations under the Agreement, nor shall such default of City affect this Sublease, or waive or defer the performance of any of Concessionaire's obligations hereunder. In furtherance of the foregoing, Concessionaire hereby waives any cause of action and any right to bring an action against Host by reason of any such act, omission, negligence or default of City under the Agreement.

**1.04. No Breach of Agreement.** Concessionaire, its agents, employees or anyone claiming from, through or under Concessionaire, will not do, permit, or suffer any act or omission which would (i) constitute a breach or violation by Host of any of the terms, covenants, conditions or provisions of the Agreement, (ii) enlarge any of the obligations of Host under the Agreement, or (iii) give City the right to terminate the Agreement. Any violation of the provisions of the Agreement by Concessionaire shall be deemed to be, for all purposes hereunder, a default under this Sublease, for which Host shall have all of the remedies provided by this Sublease.

**1.05. Termination of Agreement.** If for any reason the Agreement expires or is terminated prior to the expiration of the Term of this Sublease, either by its terms or by City or by Host, whether pursuant to any termination rights therein reserved or therein granted to either of said parties or otherwise, then, on the date of expiration or termination of the Agreement, this Sublease and the term hereof shall automatically terminate with the same force and effect as though such termination date were the date herein fixed for the expiration of the Term and Host shall not be liable to Concessionaire by reason thereof.

## **2. Contingencies.**

**2.01. City Approval.** This Sublease is subject to and contingent upon the City's approval of Concessionaire, this Sublease, and the Location portion of the Premises hereunder being added to the Agreement. If any of such approvals have not been obtained within thirty (30) days hereafter, Host shall be entitled to declare this Sublease null and void, effective upon notice to Concessionaire. In the event said approval has not been or is not obtained, Concessionaire shall hold Host and City harmless and shall not in any way pursue any claim against Host or City for such failure, including any claim for reimbursement of expenditures made by Concessionaire with respect to this Sublease and/or the Premises or for prospective profits.

**2.02. Certification.** This Sublease is subject to and contingent upon Concessionaire being validly certified and maintaining its valid certification as an Airport Concession Disadvantaged Business Enterprise ("ACDBE") by the City or the appropriate certifying entity (the City or such other entity, as applicable, being the "Certifying Entity") in accordance with all applicable laws, rules and regulations and as set forth more fully herein.

**2.03. Brand Franchise/License.** This Sublease is subject to and contingent upon Concessionaire furnishing to Host a copy of the license or franchise agreement which authorizes Concessionaire to operate in the Premises (as defined in Section 3 herein) under a brand name if Concessionaire's use, as described in this Sublease, provides therefor. Without limiting the foregoing, Concessionaire represents it owns Pafs Bread, LLC which holds the franchise agreement under which Concessionaire is authorized to operate the Premises as Panera.

**2.04. Liquor and/or Business Licenses.** This Sublease is subject to and contingent upon Concessionaire obtaining, maintaining, and furnishing to Host a copy of any and all liquor and/or business licenses required for the operation of the Premises.

**3. Premises.** Host hereby subleases to Concessionaire and Concessionaire hereby subleases from Host the concession premises located on the Boarding Level in A North at the Airport which concession premises contain approximately 1,200 square feet, as generally depicted on Exhibit A (the “Location”). The location and square footage of the Location are subject to confirmation by the City and Host. In addition, Host may, in its discretion, provide support premises (the “Support Premises”) for Concessionaire’s use as storage for the Location hereunder during the Term of this Sublease. The Location and the Storage Premises, if any, are also referred to herein, collectively as the “Premises.”

The depiction of other facilities on Exhibit A or the description of the uses or names of other facilities shown on Exhibit A shall not be construed as a representation by Host that such other facilities shall be so developed, maintained, used or named. Host reserves the right to increase, reduce, relocate, or recapture the Premises or to increase, reduce, relocate, or recapture any common areas or any other tenant premises in the event that such increase, reduction, relocation, or recapturing is necessary to accommodate a change in the design or use of the Airport by City, including but not limited to relocation of security checkpoints. Any relocation, expansion or reduction shall be accomplished as expeditiously as is reasonable under the circumstances, and any adjustment to the Premises shall be formally made by the execution of a written amendment to this Sublease. The Premises shall not be delivered to Concessionaire until all requirements are met pursuant to Section 4.02 herein.

In the event Concessionaire’s Location is relocated, Concessionaire will be reimbursed its reasonable moving costs, as defined in the Agreement, provided Concessionaire has fulfilled all conditions in the Agreement to receiving such reimbursement, and to the extent the City determines Concessionaire’s costs are eligible for reimbursement and provides such reimbursement.

In the event Concessionaire’s Location is recaptured in whole or part, or relocated, as set forth in the Agreement, Concessionaire will be reimbursed its undepreciated capital investment, as defined in the Agreement, provided Concessionaire has fulfilled all conditions in the Agreement to receiving such reimbursement, and to the extent the City determines Concessionaire’s investment is eligible for reimbursement and City provides such reimbursement.

On an annual basis, City and Host will undertake an audit of the space Concessionaire is occupying (“Space Reconciliation”) to document and verify the Premises and ensure the correct Fixed Space Rental, as defined below, is being paid. Within one hundred twenty (120) days from the date



that the final Space Reconciliation is agreed upon by City and Host, Host and Concessionaire will pay each other any monies found to have been over or underpaid as a result of said Space Reconciliation.

Concessionaire acknowledges that its right to occupy the Premises is that of a licensee and that such right is possessory only, subject to the terms of this Sublease, and does not constitute an interest in real estate.

#### **4. Term.**

##### **4.01. Term.**

**A. Term.** The term of this Sublease (the “Term”) shall commence on the date hereof (the “Term Commencement Date” hereunder) and shall expire on the earliest to occur of: i) the earlier termination of the Agreement; ii) the earlier termination by operation of this Sublease; or iii) at 11:59 p.m. on June 30, 2030 (the “Term Expiration Date”).

**4.02. Delivery of Certificates, Bonds and Other Approvals.** PRIOR TO HOST'S DELIVERY OF PREMISES TO CONCESSIONAIRE, CONCESSIONAIRE SHALL DELIVER TO HOST'S DIRECTOR OF OPERATIONS AT THE AIRPORT THE FOLLOWING:

**A.** Proof of Concessionaire's valid certification as an ACDBE;

**B.** Certificates or policies of insurance required pursuant to this Sublease;

**C.** Any and all bonds or other security instruments required pursuant to this Sublease;

**D.** Proof, including the furnishing of a copy of the license or franchise agreement that Concessionaire is authorized to operate at the Premises under a brand name if Concessionaire's use, as described in this Sublease, provides therefor;

**E.** Reimbursement to Host for any design and construction funds expended by Host on Concessionaire's behalf, including but not limited to architectural and engineering fees, estimating fees, design management fees, construction management fees, insurance costs, interest on construction financing and costs paid to general contractors, equipment suppliers or installers, signage suppliers or installers and/or seating and decor suppliers;

**F.** Reimbursement to Host of any other funds expended on Concessionaire's behalf by Host;

**G.** Copies of all licenses required for operation of the Premises, including certificate of occupancy liquor, and business licenses; and.

**H.** A fully executed copy of this Sublease.

CONCESSIONAIRE WILL NOT BE ALLOWED TO OPEN UNTIL ALL OF THE ABOVE ARE COMPLETE.

**4.03. Late Opening Fee.** Concessionaire shall pay Host, within ten (10) days of Concessionaire's receipt of an invoice, one hundred dollars (\$100.<sup>00</sup>) per day as a fee for each day beyond the Rent Commencement Date on which the Location is not open to the public for business, payable each Monday for the number of days in the prior week that the Location is not open. This late opening fee shall be in addition to and not in lieu of all other monetary obligations payable by Concessionaire under this Sublease and represents the parties' estimate of the damages that will be caused to Host in the event of Concessionaire's failure to be open for business. Host's failure to invoice Concessionaire for such late opening fee shall not waive Host's rights, including its right to subsequently invoice Concessionaire for the late opening fee and/or Host's right to terminate this Sublease. Receipt by Host of the late opening fee shall not preclude Host from availing itself of additional remedies for such late opening, including termination of this Sublease.

**5. Use.** Concessionaire shall use the Location to operate Panera selling at retail the items listed on Exhibit "B" at the prices approved by Host and City and for no other purpose, activity or operation whatsoever. Concessionaire shall not add or delete items from those listed on Exhibit B, or change prices, without the prior written consent of Host and City. In the event Host or City determines that any of Concessionaire's products are objectionable for display or sale, Concessionaire shall, upon written notice from Host, immediately remove such item from its inventory and shall thereafter discontinue displaying, offering for sale, or selling such item. All prohibitions and restrictions as to use of the Premises which are applicable to Host pursuant to the Agreement shall likewise apply to Concessionaire; provided, however, that such prohibitions and restrictions may be enforced against Concessionaire by either Host or City. Concessionaire does not have the exclusive right for the sale in the Airport, or any portion thereof, of any item or brand which Concessionaire is authorized to sell pursuant to this Sublease. Host may be operating competing businesses within the Airport for the sale of the same or similar items or brands.

Concessionaire acknowledges that any rights granted by certain national brands to Host International, Inc. as part of Host's exclusive master agreement with that corporation, remain the exclusive rights of Host hereunder, notwithstanding Host's grant of this Sublease to Concessionaire for operation of this Panera unit during the term of this Sublease. This Sublease is a grant for the operation of a Panera concession at the specified Location only, for the limited term of this Sublease,

and Concessionaire has no right to any exclusive territory or to object to the location of an additional Panera or other similar concession at a site which is in proximity of the Location and/or in the same trading area of the Location. Host shall be free to itself propose or bid for, or itself develop other concessions under the same or other brand locations at the Airport on its own during the term of this Sublease and thereafter.

Additionally, Concessionaire acknowledges that this Sublease is solely for the purpose of operating the Premises until expiration of this Sublease and Host shall not be required to grant the Concessionaire any future rights to use the brand names in any future bids or proposals for any concessions at the Airport, including but not limited to future bids or proposals for the Location following expiration of this Sublease. Concessionaire has no other right to a new or renewed Sublease upon the expiration of the term of this Sublease.

## **6. Operation of Premises.**

**6.01. Responsibility for Operations.** Concessionaire understands and agrees that Host has entered into this Sublease with the understanding that Concessionaire shall at all times perform a substantial operating or management role relating to the Premises which are the subject matter of this Sublease. The representation by Concessionaire that it will perform a substantial operating or management role is relied upon by Host and is a material inducement to Host to enter into this Sublease. There are no verbal or written agreements between Concessionaire and Host relating to the role to be performed by Concessionaire, or relating to financing or other monetary arrangements, except as set forth in this Sublease. If any future agreements are reached between them, such agreements shall be promptly incorporated as a written amendment to this Sublease. No such future agreements shall be binding on Concessionaire or Host until a written amendment to this Sublease shall be effective.

Concessionaire shall be solely responsible for the operation of the Premises in accordance with this Sublease, the employment of persons who work at the Premises, and all costs and expenses incurred in connection with the conduct of business at the Premises, and Host shall have no responsibility for any of the same.

**6.02. Agreement Requirements.** Concessionaire shall be subject to all the requirements, terms, covenants, conditions and restrictions with respect to the occupancy, operation, use and care of the Premises and Concessionaire's conduct in the Airport which apply to Host pursuant to the Agreement. Host shall be entitled to enforce such Agreement provisions as to Concessionaire and/or the Premises in the same manner and mode as City is entitled to enforce such Agreement provisions with respect to Host pursuant to the Agreement, except that Concessionaire shall be entitled to only the lesser of (i) any applicable cure set forth herein or (ii) one-half (1/2) of any applicable grace or cure period, to

which Host is entitled under the Agreement before Host shall be entitled to enforce the same, it being understood and agreed that Host shall be entitled to exercise its rights as against Concessionaire hereunder prior to the time that City is entitled to act against Host. Without limiting Host's remedies herein, Concessionaire's performance hereunder is subject to any and all delinquency charges, sanctions, liquidated damages, fines, interest and/or late fees, and other means of enforcement, as set forth in the Agreement and/or Sublease.

**6.03. Representative of Concessionaire.** During all hours that the Premises are open, Concessionaire shall retain at the Premises at least one (1) qualified representative, authorized to represent and act for it in matters pertaining to the operation of the Premises, and shall keep Host informed in writing of the identity of each such person. In addition, the representative of Concessionaire shall provide a non-work contact to Host for use in the event of an emergency.

**6.04. Ingress and Egress.** Concessionaire shall possess the right of ingress to and egress from the Premises as is necessary in order for Concessionaire to fulfill the terms of this Sublease, subject to the terms of the Agreement and any applicable Airport rules and regulations. Concessionaire agrees that the exercise of such right shall not impede or interfere with the operations of Host and/or its other subtenants or with the use and operation of the Airport by City, its tenants, other authorized occupants or the traveling public.

**6.05. Rights under the Agreement.**

**A. Rights of City are Also Reserved by Host.** All rights of City pursuant to the Agreement with respect to Host are likewise reserved in favor of Host with respect to Concessionaire, so that such rights may be exercised as to Concessionaire by either Host or City.

**B. Rights of Host are not Reserved by Concessionaire.** Concessionaire's rights under this Sublease are fully set forth and explained exclusively in this Sublease, and Concessionaire does not receive and shall not have any other rights by virtue of any other document or agreement, including, without limitation, the Agreement. The rights of Host with respect to City that accrue to Host under the Agreement do not pass to Concessionaire with respect to Host in any form whatsoever, except as specifically provided for in this Sublease. By way of illustration only, if Host has the right to sell a certain item at the Airport, Concessionaire shall not have a right to sell such item except as such right is granted in this Sublease.

**6.06. Compliance with Laws and Regulations.** Concessionaire shall comply with all applicable federal, state and local laws, ordinances, rules and regulations respecting Concessionaire's use and occupation of the Premises, the hiring and employment of Concessionaire's personnel at or about the Premises, and the conduct of Concessionaire and its personnel at the Airport and in the

Premises, as well as all rules and regulations of City in respect to the Airport, now or hereafter in effect.

**6.07. Relationship of Parties.** Concessionaire is not and shall not hold itself out as an agent, legal representative, partner, subsidiary, joint venturer or employee of Host. Concessionaire shall have no right or power to, and shall not, bind or obligate Host in any way, manner or thing whatsoever, nor represent that it has any right to do so. In all public records, in its relationship with other persons, and on letterheads and business forms, Concessionaire shall indicate its independent ownership of said business. There is no fiduciary relationship between Host and Concessionaire.

**6.08. Hazardous Substances.** No goods, merchandise, or materials that are explosive or hazardous shall be kept, stored, or sold in or on the Premises, and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon. Nothing shall be done on the Premises, other than as is provided for in this Sublease, which will increase the rate of or suspend the insurance upon the Premises or upon structures of the Airport. No machinery or apparatus shall be used or operated on the Premises which will damage the Premises or adjacent buildings. Nothing in this section shall preclude Concessionaire from bringing, keeping, or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, provided, however, that Concessionaire shall be and remain exclusively responsible for and liable for any damages caused by the bringing, keeping and/or using of such materials, supplies, equipment and/or machinery.

**6.09. Performance Standards.** Without limiting Concessionaire's obligation to comply with all applicable federal, state and local laws, ordinances, rules and regulations, and all rules and regulations of the City, Concessionaire shall observe the following performance standards ("Performance Standards") in addition to those contained in the Agreement and elsewhere in this Sublease:

**A. Operation of Premises.**

**1) Hours of Operation.** The Location shall be open from and after the Rent Commencement Date for business for the hours determined by the City and Host, seven (7) days a week, including holidays, except as may be otherwise approved in writing by Host, or for such longer or shorter hours as determined by the City and Host. At no time shall the Location be left unattended or temporarily closed while employees go on break or for other such reasons.

**2) Cleanliness and Order.** The Premises shall be kept clean and in good order and Concessionaire shall observe superior sanitation standards at all times. No loud or inappropriate music will be played at the Premises.

**3) Compliance with Other Agreements.** In the event the Premises are operated as a “branded” facility by Concessionaire pursuant to a license or franchise, Concessionaire shall fully comply with all of the standards of the licensor or franchisor, perform all of the terms and conditions of such license or franchise and keep such license or franchise in full force and effect.

**4) Nuisance or Waste.** Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste in the Premises.

**5) Trash and Recycling.** Concessionaire shall recycle cans, bottles, paper, newspapers, cardboard and other items to the same extent as Host participates in recycling programs in connection with the facilities Host operates at the Airport. Concessionaire shall promptly remove from the Premises to the garbage or refuse disposal area designated by Host all rubbish, refuse, packaging and garbage; and, if such service is not provided by others, Concessionaire shall remove from the Airport the accumulation of all such material in said garbage or refuse disposal area at such frequent intervals as Host may reasonably direct. Any trash chutes used exclusively by Concessionaire shall be cleaned and sanitized by Concessionaire at regular intervals as needed. If reasonably necessary, Concessionaire shall provide an appropriate odor-free, liquid-tight trash compactor(s), which it shall clean and sanitize as needed.

## **B. Personnel.**

**1) Manager.** Concessionaire’s on-site manager at the Location (the “Manager”) shall be an active, qualified, experienced and competent Manager with the complete responsibility and authority to respond quickly and decisively to Host and City in all matters affecting the operation of the Premises. Concessionaire shall at all times ensure, in the absence of the Manager, that a qualified supervisor is available and empowered to act quickly and decisively in response to any need arising from the operation of the Premises during normal business hours as well as in the evenings and/or in the event of an emergency.

**2) Staffing.** Concessionaire shall provide an adequate number of employees on each shift to assure the highest standards of public service and satisfactory operation and maintenance of the Premises at all times. Concessionaire shall provide appropriate staffing levels to accommodate peak periods of passenger activity and shall add an appropriate number of employees to respond to increased levels in potential customers resulting from changes in airline schedules or relocation of airline gates.

**3) Deportment.** Concessionaire shall require its employees in all circumstances to observe a strict impartiality as to quantities and services, to provide fast service, to exercise courtesy and consideration in dealing with the public and to give directions and make change cheerfully. Employees will acknowledge, greet and/or welcome customers and provide assistance to customers as needed or requested. Concessionaire's employees shall be proficient in customer service and sales techniques. Employees shall not eat or drink behind counters or registers or in the store selling space during business hours, or store personal belongings within view of customers at the Premises.

**4) Customer Service Training.** Concessionaire's employees shall conduct themselves in accordance with the rules and precepts of the industry standards for customer service. Concessionaire's employees shall attend any customer service training programs made available to such employees by the City, State of North Carolina and Host. Employees shall be trained in retail service selling skills and shall be knowledgeable about the products and services offered at the Location. Concessionaire shall certify to Host, if requested, that such training has been completed for all employees.

**5) Uniforms and Badges.** All employees of Concessionaire who come in contact with the public shall wear professional uniforms or, if Concessionaire does not have a standard uniform, shall be appropriately attired. Such uniforms or attire shall be subject to approval by Host's Director of Operations at the Airport. All employees shall wear identification badges subject to approval by Host's Director of Operations at the Airport, which clearly state Concessionaire's company name and the individual employee's name. If the Premises are operated pursuant to a license or franchise, the franchisor/licensor's uniform shall be acceptable to Host. The uniforms or other attire of employees shall be kept neat and clean and employees shall be well groomed.

**C. Service, Marketing, Advertising and Promotion Initiatives.** If required by the Agreement, Concessionaire shall participate in and adopt all customer service, marketing, advertising and promotion programs that are created and implemented by Host and/or City. All of Concessionaire's advertising at the Airport, as well as any advertising by Concessionaire related solely to the Premises at the Airport, shall be subject to Host's prior approval. National programs implemented by Host and adopted by Concessionaire will be maintained as per the guidelines set forth in the program communication.

**D. Refurbishment of Premises.** Concessionaire shall have available at least one percent (1%) of its annual Gross Receipts for the refurbishment of the Location, including the carpeting, flooring, fixtures, equipment and visual displays, beginning with the second

anniversary of Concessionaire's opening of the Location for business. Such funds shall be expended by Concessionaire as required by the Agreement and/or at Host's direction based upon the condition and appearance of the Location. Concessionaire shall maintain receipts evidencing compliance herewith for the term of this Sublease and shall make such receipts available to Host, upon request, to prove such compliance.

Without limiting the foregoing or any other refurbishment requirements set forth in the Agreement or Sublease, Concessionaire shall spend such amount or amounts as required by City and Host to maintain the Location, and Support Premises if any, in first class condition comparable in quality and appearance to all comparable facilities maintained at modern passenger terminals at other major airports in the United States. During the Term hereof, City and Host shall have the right to decide when Concessionaire shall refurbish, redecorate and renovate any and all parts of the Location, and Support Premises if any.

In addition, and subject in all respects to the review and approval of the City and Host, Concessionaire shall spend a minimum of seventy-five dollars (\$75.00) per square foot to refurbish the Location by no later than December 31, 2023 ("First Midterm Refurbishment"), and shall spend an additional minimum of seventy-five dollars (\$75.00) per square foot to refurbish the Location again by no later than December 31, 2028 ("Second Midterm Refurbishment").

**E. Performance Standard Defaults and Cure Periods.** Any failure by Concessionaire to comply with the foregoing Performance Standards shall constitute an Event of Default as enumerated in this Sublease.

## **7. Services Provided by Host to Concessionaire.**

**7.01. Services Provided Free of Charge.** Without limiting Concessionaire's obligation to comply with all applicable federal, state and local laws, ordinances, rules and regulations, and all rules and regulations of the City, Host's on-site personnel may provide Concessionaire with certain services without charge therefor, as requested by Concessionaire, as follows:

**A. Management Direction.** Concessionaire may meet regularly with Host's Director of Operations at the Airport to discuss the development and maintenance of goals and methods of operation.

**B. Product Purchasing.** Host's local purchasing personnel may provide Concessionaire with advice and counsel regarding product specifications, product selection and vendor selection.



**C. Personnel Hiring and Training.** Host may assist Concessionaire in developing an employee recruitment plan. All Host training classes, conducted by Host, which are held at the Airport for the purpose of training Host employees may also be attended by Concessionaire's employees upon approval by Host and, in Host's discretion, at no charge to Concessionaire.

**D. Liaison with City.** Host's Director of Operations at the Airport shall serve as a liaison between Concessionaire and City.

**7.02. Services Provided for a Fee.** In the event that Concessionaire requires services beyond the free advice and counsel set forth herein, Concessionaire may request that Host perform additional services for Concessionaire for which Host shall be paid a fee. Upon request, Host shall provide Concessionaire with a price list for such additional services which prices shall be subject to change. Upon request, Host shall provide such additional services, subject to Host's ability to do so given the practical circumstances then existing. These additional services which Host, upon Concessionaire's request, may provide for a fee are as follows:

**A. Design and Construction Services.** In the event that Concessionaire requires any design and/or construction assistance from Host, Host may provide such services and Concessionaire shall reimburse Host for the costs of providing such services pursuant to this Sublease.

**B. Accounting.** Host's local accounting personnel may provide sales and cost accounting direction and assistance.

**C. Food and Beverage Purchasing.** Subject to Attachment 1 ("Food and Beverage Purchasing Conditions"), attached hereto and incorporated herein, Concessionaire may purchase from Host such food and beverage items for sale at the Location as Host may carry in Host's commissary at the Airport and which Concessionaire is permitted to sell under this Sublease. Host shall provide, at Concessionaire's request, a price list of the available food and beverage items and Concessionaire may elect whether it wishes to purchase such items. The price list will be updated periodically and may include the cost of regularly scheduled deliveries and the amount of any extra charge for special deliveries requested by Concessionaire. Host shall invoice Concessionaire for all food and beverage items purchased by Concessionaire from Host, which invoice may accompany the delivery of such food and beverage items. Invoices for food and beverage items purchased by Concessionaire from Host must be paid within ten (10) days of presentation. During any period while Concessionaire is delinquent in the payment of food and beverage items purchased pursuant to this Section, Host, in addition to resorting to any remedies available to Host for such delinquency, including Sublease termination, may refuse to make further sales of food and beverage items to Concessionaire or may, in its discretion, require that all further purchases of food and beverage items from Host shall be made on a payment in cash upon delivery basis until such delinquency is cured.

**8. Assignment and Subletting.** Concessionaire shall not: (i) assign (directly or by operation of law), sublet or otherwise transfer this Sublease or any portion of the Premises; (ii) transfer any rights or privileges conferred upon Concessionaire pursuant to this Sublease by management contract or otherwise; nor (iii) permit any change in the ownership or control of Concessionaire without the prior written consent of Host in each instance and, to the extent required under the Agreement, the prior written consent of City. Prior to any change in ownership or control of Concessionaire, Concessionaire shall obtain valid ACDBE certification for Concessionaire as so changed. Any assignment, sublease, transfer or change in ownership or control in violation of this Section shall constitute a default hereunder. Consent to one assignment, sublease or transfer shall not constitute approval of any subsequent proposed assignment, sublease or transfer.

**9. ACDBE Certification.** Concessionaire acknowledges that compliance with ACDBE rules, laws and regulations, including 49 Code of Federal Regulations (“CFR”) Parts 23 and 26, and the City’s and Host’s ability to count Concessionaire’s revenue (pursuant to the Agreement or Sublease) toward Host’s ACDBE participation goals, are material requirements of the Agreement and this Sublease. At all times during the Term of this Sublease, Concessionaire shall be and shall remain validly certified as an ACDBE by the Certifying Entity, as defined in Section 2.02 herein, in accordance with all applicable laws, rules and regulations. Concessionaire shall timely file any and all applications, together with all supporting documentation, necessary to maintain such certification. Failure to comply with any of the ACDBE certification requirements set forth herein is an Event of Default under this Sublease.

Without limiting the foregoing, Concessionaire shall comply with the following provisions. Any required notices or submissions to Host shall be sent to both Notice addresses for Host stated in Section 24 herein.

**A.** Prior to execution of this Sublease, Concessionaire shall provide proof of its valid ACDBE certification by submitting copies of the following documents to Host; however, if for any reason Concessionaire has not done so prior to execution, Host shall be entitled to declare this Sublease null and void upon notice to Concessionaire:

- 1) Concessionaire’s ACDBE certification from the Certifying Entity; and
- 2) If Concessionaire’s last available ACDBE certification is more than one (1) year old, a completed and executed ACDBE No Change Declaration (“Declaration Form”), a copy of which is attached hereto and incorporated herein as Attachment 2.

Concessionaire’s ACDBE Certification Date is October 9, 2018 (“the Certification Date”). Concessionaire’s Annual Update deadline for its certification status is October 31 each year during the

Term of this Sublease (the “Annual Update”).

**B.** If at any time during the Term of this Sublease Concessionaire’s ACDBE certification will expire, Concessionaire shall apply for recertification of its ACDBE status no less than ninety (90) days before such expiration.

**C.** To confirm Concessionaire’s on-going valid ACDBE certification, each year during the Term of this Sublease, Concessionaire shall:

- 1) Provide Concessionaire’s updated, completed and executed Declaration Form to Host by no later than the Annual Update deadline;
- 2) Submit Concessionaire’s Annual Update affidavit to the Certifying Entity in such time and manner as required by the Certifying Entity; and
- 3) Provide a copy of Concessionaire’s Annual Update approval letter to Host within (thirty) 30 days of receipt of same from the Certifying Entity if the Certifying Entity’s practice is to provide an approval letter in response to a submitted Annual Update affidavit.

**D.** If at any time during the Term of this Sublease Concessionaire becomes aware of any change in its circumstances which may affect its certification status (including but not limited to a notice received from the Certifying Entity or because Concessionaire is aware of changes in its internal operations), Concessionaire shall send written notice of such change to Host.

**E.** Concessionaire is solely responsible for the content, accuracy and sufficiency of (i) any documentation and information it provides to Host or any other party with respect to Concessionaire’s ACDBE certification, and (ii) the information provided in any Declaration Form.

**F.** In the event that (i) Concessionaire fails to obtain or maintain its valid ACDBE certification, (ii) Concessionaire’s certification is ever suspended, revoked, terminated or invalidated for any reason whatsoever, and/or (iii) Concessionaire fails to fulfill any of the requirements herein necessary to become validly certified, or maintain and prove its on-going valid ACDBE certification, then this Sublease will automatically terminate upon written notice from Host to Concessionaire. In the event of such termination, Concessionaire shall hold Host, and the City, their predecessors, successors and assigns, and the directors, officials, officers, agents and employees of each of them, harmless and shall not in any way pursue any claim against any or all such parties for or related to said failure, or any resulting termination of this Sublease, including without limitation any claim for reimbursement of expenditures made by Concessionaire with respect to this Sublease and/or the Location or for prospective profits.

## **10. Rent.**

**10.01. Definitions.** The definition of “Gross Receipts” in the Agreement is incorporated herein and shall constitute the definition of such term as used in this Sublease. The term “Sublease Year” has the same meaning as Contract Year in the Agreement which is the twelve-month period beginning on July 1 of each year and ending on the following June 30.

**10.02. Rent Commencement.** Concessionaire’s obligation to pay rent and other monetary obligations to Host hereunder shall commence on the earlier to occur of: (i) one hundred sixty (160) days after the Location is delivered to Concessionaire; or (ii) the date on which Concessionaire opens for business (which earlier date is hereinafter referred to as the “Rent Commencement Date”).

**10.03. Rental Amounts.** From and after the Rent Commencement Date, Concessionaire agrees to pay to Host without demand, set off or abatement, at Host / 7217 Collection Center Drive / Chicago, Illinois 60693, in lawful money of the United States each Sublease Year for the leasehold and concession privileges described herein, and under the terms and conditions set forth in this Sublease, the greater of:

- (i) a percentage of Gross Receipts fee (“Percentage of Gross Receipts Fee”) in an amount equal to fifteen and one-half percent (15.5%) of annual Gross Receipts, or
- (ii) a minimum annual concession fee (“Minimum Annual Concession Fee”) as follows:

- (a) From the Rent Commencement Date through June 30, 2019 ( “First Partial Sublease Year”), the Minimum Annual Concession Fee is abated;
- (b) For the first full Sublease Year commencing July 1, 2019 (“First Full Sublease Year”), the Minimum Annual Concession Fee will be equal to 80% of (the annualized Gross Receipts from the First Partial Sublease Year x 15.5%); and
- (c) For the second full Sublease Year commencing July 1, 2020, and each Sublease Year thereafter, the Minimum Annual Concession Fee will be equal to eighty-five percent (85%) of the prior Sublease Year’s Percentage of Gross Receipts Fee, provided that the Minimum Annual Concession Fee shall never be less than the Minimum Annual Concession Fee for the First Full Sublease Year.

The Percentage of Gross Receipts Fee and the Minimum Annual Concession Fee are together referred to in this Sublease as “Rent.”

**10.04. Minimum Annual Concession Fee Payment.** Concessionaire shall pay the Minimum Annual Concession Fee to Host in equal monthly installments, in advance, on the first day of each month, without demand, and with any partial months to be prorated. Concessionaire’s Minimum Annual Concession Fee payment to Host is considered late if Host has not received the payment in full by the first (1<sup>st</sup>) day of each month.

**10.05. Percentage of Gross Receipts Fee Payment and Gross Receipts Reporting.** Concessionaire shall furnish to Host, on or before the tenth (10<sup>th</sup>) day following each calendar month or partial month occurring during the term of this Sublease, via fax to the attention of the Sublease Compliance Department at (866) 721-2326 or (301) 896-5118, via email to [sublease.compliance@hmshost.com](mailto:sublease.compliance@hmshost.com), or via a website as may be developed and required by Host, a detailed statement certified by the Concessionaire and prepared in a manner consistent with the requirements of the Agreement and otherwise reasonably approved by Host, of the Gross Receipts derived at or from the Premises during the previous calendar month and the calculation of Concessionaire’s payments due to Host for the previous calendar month. With such statement Concessionaire shall calculate and pay any additional amount due over and above the monthly Minimum Annual Concession Fee. Concessionaire’s Percentage of Gross Receipts Fee payment is considered late if Host has not received the payment in full by the tenth (10<sup>th</sup>) day of each month.

**10.06. Annual Certified Statement of Gross Receipts; Annualization.** Concessionaire shall furnish to Host annually within sixty (60) days after the end of each Sublease Year, an annual statement certified by an independent certified public accountant, and consistent with the requirements of the Agreement and City, showing Gross Receipts derived from the Premises during the preceding

Sublease Year and Concessionaire's computation of the Rent payable for the previous Sublease Year. Payment of any Percentage of Gross Receipts Fee due based on such report shall accompany such report. If the Concessionaire has overpaid the Rent due for the preceding Sublease Year, Concessionaire shall deduct such overpayment from the Rent next falling due, except that if the report filed after the end of the final Sublease Year, or portion thereof, shows a Rent overpayment, a cash refund to the Concessionaire will be made by Host within fifteen (15) days after receipt of such final report. The purpose of annualization shall be to effect payment to Host by Concessionaire of the greater of the Minimum Annual Concession Fee or the Percentage of Gross Receipts Fee for each Sublease Year. This requirement to provide an annual, audited statement of Gross Receipts shall be in addition to any other obligations set forth herein or in the Agreement and shall in no way limit or excuse Concessionaire from such obligations.

**10.07. Fixed Space Rental.** In addition to the payment of Rent, Concessionaire shall pay a fixed space rental ("Fixed Space Rental") for the Premises (being the Location and the Support Premises, if any) as follows:

**A. Fixed Space Rental for Location.** From and after July 1, 2020, Concessionaire shall pay a Fixed Space Rental for the Location calculated as the product of the number of square feet of the Location and the per square foot rental rate ("PSF Rental Rate") established, and subject to adjustment, by the City for the Location for the relevant Sublease Year.

For reference purposes only, as of July 1, 2017, the PSF Rental Rate for F&B Location Premises – Class A is \$71.07.

The PSF Rental Rate for the Location for the Sublease Year commencing July 1, 2020, shall be as follows:

PSF Rental Rate then in effect as determined, and subject to adjustment, by the City for F&B Location Premises – Class A.

**B. Fixed Space Rental for Support Premises.** From and after the Rent Commencement Date, Concessionaire shall pay a Fixed Space Rental for the Support Premises calculated as the product of the number of square feet of the Support Premises and the PSF Rental Rate established by the City for the category of Support Premises for the relevant Sublease Year. The PSF Rental Rate for the categories of Support Premises for the Sublease Year commencing July 1, 2017, is as follows:

\$50.02 F&B Support Premises – Class B  
\$15.09 F&B Support Premises – Class C (Basement)

**C. Fixed Space Rental Payments.** Concessionaire shall pay to Host the Fixed Space Rental for the Location and the Fixed Space Rental for the Support Premises each in equal monthly installments, in advance, on the first day of each month, without demand, and with any partial months to be prorated. Concessionaire's Fixed Space Rental payments to Host are considered late if Host has not received the payments in full by the first (1<sup>st</sup>) day of each month.

**D. Adjustment of PSF Rental Rate.** The PSF Rental Rates applicable to the Fixed Space Rentals may be adjusted by the City every four (4) years from July 1, 2017, and any such adjustment shall take effect without formal amendment to the Sublease upon the date designated by the City and Host.

**10.09. Janitorial Fee.** From and after the Rent Commencement Date, Concessionaire shall pay to Host each Sublease Year a fee which is Concessionaire's pro rata share of the Janitorial Services (as defined in the Agreement) for the Premises (the "Janitorial Fee"). Concessionaire's pro rata share will be allocated based on sales for the prior Sublease Year. The Janitorial Fee will be invoiced monthly to Concessionaire based on actual costs and the pre-established allocation, and is payable in advance, on the first day of each month, with any partial months to be prorated. At the end of each Sublease Year, Host will true-up the Janitorial Fee based on actual sales for that Sublease Year and the pre-determined allocation, and Concessionaire's fee will be adjusted as necessary. In addition, the Janitorial Fee may be adjusted as determined by the City.

**10.10. Pest Control Fee.** From and after the Rent Commencement Date, Concessionaire shall pay to Host each Sublease Year a fee which is Concessionaire's pro rata share of the Pest Control Services (as defined in the Agreement) for the Premises (the "Pest Control Fee"). Concessionaire's pro rata share will be allocated based on sales for the prior Sublease Year. The Pest Control Fee will be invoiced monthly to Concessionaire based on actual costs and the pre-established allocation, and is payable in advance, on the first day of each month, with any partial months to be prorated. At the end of each Sublease Year, Host will true-up the Pest Control Fee based on actual sales for that Sublease Year and the pre-determined allocation, and Concessionaire's fee will be adjusted as necessary. In addition, the Pest Control Fee may be adjusted as determined by the City.

**10.11. Trash and Dumpster Fee.** From and after the Rent Commencement Date, Concessionaire shall pay to Host each Sublease Year a fee which is Concessionaire's pro rata share of trash disposal and dumpster services at the Airport (the "Trash and Dumpster Fee"). Concessionaire's pro rata share will be allocated based on sales for the prior Sublease Year. The Trash and Dumpster Fee will be invoiced monthly to Concessionaire based on actual costs and the pre-established allocation, and is payable in advance, on the first day of each month, with any partial months to be prorated. At the end of each Sublease Year, Host will true-up the Trash and Dumpster Fee based on actual sales for that

Sublease Year and the pre-determined allocation, and Concessionaire's fee will be adjusted as necessary. In addition, the Trash and Dumpster Fee may be adjusted as determined by the City.

**10.12. Additional Rent.** All payments of any kind or description, other than Rent and Fixed Space Rental, payable by Concessionaire to Host or City in accordance with the terms and conditions of this Sublease or the Agreement are referred to as "Additional Rent," including without limitation, (i) reimbursements to Host or City for the expense of performing obligations of Concessionaire which Concessionaire fails to perform; (ii) any common area maintenance or utility charges; (iii) parking charges, pest control, janitorial, trash and dumpster fees, and (iv) fees, penalties, interest and other charges payable by Concessionaire under this Sublease or the Agreement. Unless otherwise provided herein with respect to a particular obligation, all items of Additional Rent shall be payable by Concessionaire within ten (10) days of the giving of notice, including a statement or invoice, to Concessionaire of the amount due. Additional Rent payments shall be sent to: Host / 7217 Collection Center Drive / Chicago, Illinois 60693.

**10.13. Late Payment Service Charge and Returned Checks.**

**A. Late Payment Service Charge.** In the event Concessionaire fails to make timely payment of any Rent or Additional Rent within five (5) days after same shall become due and payable, upon each such event, a one hundred dollar (\$100.<sup>00</sup>) service charge shall become immediately due and payable, together with interest at the rate of eighteen percent (18%) per annum or the maximum contract rate of interest allowed by law, whichever is less, on the delinquent payment(s) from the date due until the date payment is received by Host. Notwithstanding the foregoing, Host shall not be prevented from terminating this Sublease for default in the payment of Rent or Additional Rent or for default in the payment by Concessionaire of any payment due to City. Host and Concessionaire agree that the service charge and interest provided for herein with respect to late payments represent a fair and reasonable estimate as to the additional administrative, processing and accounting costs which will be incurred by Host as a result of any late payments by Concessionaire hereunder.

**B. Returned Checks.** In the event Concessionaire pays any Rent or Additional Rent due under this Sublease with a check that is returned, unpaid, for any reason by Concessionaire's bank (including but not limited to insufficient funds or a stop-payment order on the check) and this occurs three (3) times within any six (6) month period, upon notice from Host, Concessionaire shall make all Rent and Additional Rent payments by money order or cashier's check as required by Host until any and all amounts owed by Concessionaire under this Sublease are brought current and maintained current for an uninterrupted period of sixty (60) days. Concessionaire's payment of any Rent or Additional Rent due hereunder with a check that is returned, unpaid, for any reason by Concessionaire's bank, after Concessionaire has previously made three (3) such payments at any time during the term of this Sublease shall constitute an Event of Default, with no cure period. Concessionaire shall be charged a



thirty-five dollar (\$35.00) fee per returned check to offset the related administrative costs to Host. The fee is intended as a reasonable estimate of such costs and is subject to change by Host.

**10.14. Administrative Charge.** In the event Concessionaire defaults in the performance of any obligation to be performed under this Sublease, including without limitation the securing and maintaining of any insurance or bond; the improving, remodeling, maintaining and repairing of the Premises; or paying utilities; then Host shall have the right, but not the obligation, to perform such obligation on behalf of Concessionaire and Concessionaire shall, within ten (10) days of receipt of any invoice therefor, reimburse Host for the amount expended by Host in performing such obligation on behalf of Concessionaire plus an administrative charge of twenty percent (20%) of such amount. Concessionaire agrees that it shall pay and discharge all costs and expenses, including attorney fees, expended by Host in collection of any delinquent amounts due hereunder, including administrative and service charges.

**10.15. Books, Records and Audits.** Except as expressly modified herein, the provisions of the Agreement with respect to financial statements and the certification thereof; maintenance of, access to, and retention of books and records; and rights to audit and adjustments, charges and penalties in respect to audits are incorporated herein and shall apply under this Sublease as between Concessionaire and Host in the same manner as they apply under the Agreement as between Host and City.

**11. Taxes, Assessments and Liens.** The provisions of the Agreement with respect to taxes, assessments and liens shall apply under this Sublease as between Concessionaire and Host in the same manner as they apply under the Agreement as between Host and City. Notwithstanding the foregoing, all real and personal property taxes assessed upon the Premises, including any partial first and/or last tax year of the Sublease, and/or any furniture, fixtures and equipment thereon, by any government authority, agency or entity, together with any sales taxes payable on Concessionaire's Rent and/or the remittance of sales tax collected from customers, shall be the sole responsibility and liability of Concessionaire. The proration method of any real property taxes due by Concessionaire shall be decided and calculated by Host. Concessionaire shall not allow any liens to attach to the Premises or to its leasehold interest. Concessionaire will be responsible for its pro rata share of consulting and legal fees and expenses incurred by Host related to any protest, challenge and/or appeal Host undertakes with respect to any property and/or sales tax assessments on the Premises, or Concessionaire's operations in the Premises, hereunder.

## **12. Improvements.**

**12.01. Acceptance of Premises "AS IS".** Concessionaire shall inspect the Premises before commencement of Concessionaire's construction, improvement and/or operation of the Premises.

Host shall have no obligation to make any alterations, additions or improvements of any nature to the Premises. Concessionaire acknowledges that Host has not made nor will make any warranties to Concessionaire with respect to the quality of construction of any leasehold improvements or tenant finish within the Premises or as to the condition of the Premises, whether express, statutory, implied or otherwise, and that Host expressly disclaims any implied warranty that the Premises are or will be suitable for Concessionaire's intended commercial purposes. By virtue of the occupancy by Concessionaire or Concessionaire's contractors of the Premises, Concessionaire shall be deemed to have accepted the non-structural components of the Premises AS IS and WITH ALL FAULTS both as between Host and Concessionaire and City and Concessionaire.

**12.02. Improvement of the Premises.** Improvement of the Premises including any work in connection with demolition, extension to the Premises, and hook-up of utilities and fire prevention or retardant systems, installation of leasehold improvements, fixtures, equipment, decorations, furnishings, and signs at or on the Premises (sometimes referred to as "improvement of the Premises," and which includes the Location, and the Support Premises if any) will be entirely accomplished by Concessionaire at Concessionaire's expense. Without limiting the foregoing, Concessionaire shall spend a minimum of four hundred dollars (\$400.00) per square foot on improvement of the Location as required by the City and Host and in accordance with the requirements of the Agreement. The Support Premises, if any, shall be improved by Concessionaire at its expense as required by the City and Host, and in accordance with the requirements of the Agreement. Notwithstanding anything to the contrary herein, Concessionaire's improvement of the Premises, including but not limited to the amount spent and quality of improvements, is subject in all respects to the requirements, review and approval of City and Host.

**12.03. Plans and Specifications.** Prior to the commencement of Concessionaire's initial improvement of the Premises or any subsequent refurbishment, remodeling or improvement of the Premises, Concessionaire shall submit two (2) sets of detailed plans and specifications, including estimated project costs, to Host's Director of Operations at the Airport for approval and for forwarding to City for approval. Such plans and specifications and other required information and materials shall be prepared and submitted in conformity with any policies and procedures of City. In addition, Concessionaire shall submit at the same time one (1) set of its plans and specifications to Project Director, Charlotte Douglas International Airport, Host International, Inc., 6905 Rockledge Drive, Bethesda, Maryland 20817. All plans and specifications shall be prepared by design professionals licensed to perform such design in the State of North Carolina.

Concessionaire shall include with its plans and specifications schematic renderings of the Premises, materials, color board(s) and a detailed layout of Concessionaire's proposed overall merchandising plan. Approval will extend to and include but not be limited to architectural and aesthetic matters. City and Host reserve the right to reject any designs submitted and to require

Concessionaire to resubmit designs and layout proposals until they meet with approval of City and Host.

In the event of disapproval of any portion of the plans and specifications or other submitted materials, Concessionaire will promptly submit necessary modifications and revisions thereof. After approval, no changes or alterations will be made in said plans, specifications or other materials. Concessionaire shall submit to City and Host the construction cost bids it receives for improvement of the Premises for City's and Host's review and approval prior to commencement of the work. Concessionaire shall be responsible to ensure that construction activities are closed off from the public view by an attractive, painted barrier, with attractive, easy to read signs explaining the construction, as approved in advance by City and Host.

No approval of plans, specifications or other documents by City or Host shall relieve Concessionaire of the entire responsibility for compliance of such documents and the construction performed pursuant thereto with all applicable codes, laws and regulations, all requirements of building permits, and all standards of design and construction applicable in the Airport.

**12.04. Quality of Materials.** All finishes, furnishings, fixtures, signage, decor and equipment shall be of excellent quality and, without limiting the foregoing, at least comparable in quality to Concessionaire's other stores in the Charlotte metropolitan area.

**12.05. Concessionaire's Construction.** Promptly after approval of Concessionaire's plans, Concessionaire shall cause all necessary demolition, and shall construct and install all the approved improvements of the Premises at no expense to the City or Host, and shall open the Location to the public for business by or before the date required by the City and Host.

**12.06. As-Builts.** Concessionaire shall be responsible for submitting architectural as-built drawings to City and Host within the lesser of (i) thirty (30) calendar days, or (ii) one-half the number of calendar days Host must provide as-builts to the City, after substantial completion of Concessionaire's initial improvement and any subsequent leasehold improvement of the Premises, and Concessionaire shall be subject to a fine of one hundred dollars (\$100.<sup>00</sup>) per day for each day of delinquency in providing such drawings. The as-built drawings shall include two (2) sets on reproducible mylar, as well as one (1) set on computer disk in AutoCAD (release 12 or higher), prepared in accordance with Host's layering standards and naming conventions (which standards and conventions are available from Host).

**12.07. Delay in Delivery of Possession.** In the event that Host shall not have delivered possession of the Location to Concessionaire in a timely manner, because of delays by City in completing its work, labor disruptions, war, insurrection, governmental restrictions, fire, flood, storm,

earthquake or any other cause not reasonably within the control of Host, the time for delivery of possession may be extended.

**12.08. Certified Construction Costs.** Within eighty (80) days after completion of any construction or renovation, Concessionaire shall provide Host with a certified statement (“Certified Construction Costs”) setting out the actual total cost of such construction, installation, furnishing, fixturing, and equipping by Concessionaire, in such detail as required by the City and Host. This statement shall be signed by Concessionaire’s chief financial officer. In addition, within seven (7) days of written request from Host, Concessionaire shall provide to Host actual invoices, and other documentation as required by Host, of all costs detailed on Concessionaire’s statement of Certified Construction Costs.

**13. Title.** As between Host and Concessionaire, title to all leasehold improvements and improvements determined by City to be non-expendable improvements, as defined in the Agreement, shall vest in Host at the expiration or earlier termination of the Sublease. Subject to the terms of the Agreement with respect to the removal of property from the Premises, all furniture, fixtures, equipment, and signage at the Premises shall be the property of Concessionaire.

**14. Utilities.** Concessionaire shall be solely responsible for paying for all of the utilities used in the Premises. In the event that said utilities are not metered to the Premises and billed directly to Concessionaire by the provider thereof, Host shall make a reasonable assessment as to Concessionaire’s consumption of said utilities and shall invoice Concessionaire accordingly subject to the terms of the Agreement. All such invoices are to be paid by Concessionaire within ten (10) days of receipt thereof.

**15. Repairs and Maintenance.** Concessionaire shall repair and maintain the Premises in accordance with the terms of the Agreement. In no event will Host have any liability to Concessionaire for any damage or inconvenience which may arise through any maintenance, repairs or other alteration of any part of the Airport (whether or not including all or any part of the Premises). Concessionaire shall maintain and repair the Premises in good condition and shall be responsible for any damage caused by Concessionaire or its employees, agents, contractors, licensees and invitees. Concessionaire hereby acknowledges and agrees that the only services and amenities to which it is entitled under this Sublease and which are included and paid for by the monthly rentals to be made by Concessionaire hereunder are those services and amenities to which Host is entitled under the Agreement as they apply to the Premises (subject to all of the terms, provisions, restrictions and conditions imposed by the Agreement). Host shall in no event be liable to Concessionaire for City’s or Host’s failure to provide any such services or amenities, nor shall any such failure be construed as a breach hereof by Host or an eviction of Concessionaire or entitle Concessionaire to an abatement of any of the Rent or Additional Rent due under this Sublease.

**16. Remodeling and Alterations.** Concessionaire shall cause no improvement, refurbishment, alterations, or remodeling of the Premises, or any portion thereof, without the prior written consent of Host and, to the extent required by the Agreement, the prior written consent of City.

**17. Signage and Advertising.**

**17.01. Definition of Signs.** For purposes of this Sublease, signs shall include, but not necessarily be limited to, identification signs, Concessionaire logos, advertising or promotions for product offerings, photographs, art displays, counter displays, brand name logos, and the like.

**17.02. Right to Install.** Concessionaire shall have the right to install and operate, within the Premises at Concessionaire's sole cost and expense, signs containing its name, and representing its business, as well as Concessionaire's standard promotional material. Concessionaire acknowledges the City's desire to maintain a high level of aesthetic quality in the Airport and in all concession facilities. Concessionaire may install professionally prepared signs in the interior of Premises that are the same as signs used in Concessionaire's other stores. Concessionaire shall immediately remove or modify any signs to which Host or City objects.

**17.03. Prohibitions.** Neon, flashing, handwritten, or hand lettered signs are prohibited.

**17.04. Signs and Fixtures Outside Premises.** Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Premises without the prior written approval of Host, and to the extent required by the Agreement, the prior written consent of City.

**17.05. Removal of Signs.** Upon the termination of this Sublease, Concessionaire shall, if requested by Host, remove any and all identification signs and similar devices placed by Concessionaire on or in the Premises. If Concessionaire fails to do so, Host may perform such work and, upon demand, Concessionaire shall pay to Host the cost thereof, plus fifteen percent (15%).

**18. Indemnity, Release, Insurance, and Bonds.** For purposes of this Section, the term "Concessionaire" shall be inclusive of its successors and assigns; and the term "Indemnified Parties" shall mean Host and City, their predecessors, successors and assigns, and the directors, officers, agents and employees of each of them.

**18.01. Indemnity.** Concessionaire shall defend, indemnify and hold harmless the Indemnified Parties, from and against any and all liability for injuries to or deaths of persons or damage to property, howsoever caused, arising directly or indirectly from Concessionaire's operation, use or improvement

of the Premises and/or Concessionaire's failure to comply with all applicable federal, state and local laws, ordinances, rules and regulations. Concessionaire covenants and warrants that it and all of its agents, servants, employees, and contractors will use due care and diligence in all of their activities and operations authorized by this Sublease.

**18.02. Release.** Concessionaire hereby releases, relinquishes and discharges the Indemnified Parties from and against: (i) any and all liabilities, lawsuits, causes of action, losses, claims, judgments, damages, fines or demands arising by reason of or in connection with the actual or alleged errors, omissions, or negligent acts, whether in contract or tort, of Concessionaire or the Indemnified Parties relating to this Sublease or to the activities of Concessionaire at the Premises or elsewhere at the Airport and/or Concessionaire's failure to comply with all applicable federal, state and local laws, ordinances, rules and regulations; and (ii) any and all costs for the investigation and defense of any and all liabilities, lawsuits, causes of action, losses, claims, judgments, damages, fines or demands referred to in the preceding clause (i) including, but not limited to, attorney fees, court costs, discovery costs, and expert fees. Concessionaire's obligations under this Section expressly extend to the actual or alleged joint or concurrent negligence of the Indemnified Parties.

**18.03. Notice and Tender of Claims.** Upon the filing or presentation of any type of claim, cause of action, or lawsuit against the Indemnified Parties for any type of damages arising out of incidents for which Concessionaire may be liable pursuant to the preceding paragraph, the Indemnified Parties shall notify Concessionaire of such claim, cause of action, or lawsuit. In the event that Concessionaire does not settle or compromise such claim, cause of action, or lawsuit at its own cost, then Concessionaire shall undertake the legal defense of any such claim, cause of action, or lawsuit at its own cost both on behalf of itself and on behalf of the Indemnified Parties until final disposition, including all appeals. The Indemnified Parties may participate in the legal defense of any such claim, cause of action, or lawsuit and in the selection of counsel by Concessionaire to defend against such claim, cause of action or lawsuit. Any final judgment rendered against the Indemnified Parties for any cause for which Concessionaire is liable hereunder shall be conclusive against Concessionaire as to liability and amount upon the expiration of the time for all appeals.

**18.04. Insurance.** It is understood that the insurance coverages and limits required of Concessionaire hereunder are designed to meet the minimum requirements of City, and are not a recommended insurance program for Concessionaire. Concessionaire alone shall be responsible for the sufficiency of its own insurance program. With no intent to limit Concessionaire's liability or the indemnification provisions set forth herein, Concessionaire shall procure and maintain during the Term of this Sublease the following insurance:

**A. Workers' Compensation and Employers' Liability Insurance.** Workers' compensation and in the amounts and on the forms required by law and employers' liability in an amount not less than

one hundred thousand dollars (\$100,000.00) per accident limit, five hundred thousand dollars (\$500,000.00) disease per policy limit, and one hundred thousand dollars (\$100,000.00) disease each employee limit.

**B. Comprehensive General Liability Insurance.** Comprehensive general liability insurance, including automobile liability insurance covering owned, hired and non-owned vehicles used in connection with the Premises. The policy or policies providing said coverage shall include Premises, products and contractual liability including, but not limited to, the indemnification obligation assumed by Concessionaire hereunder and personal injury and property damage coverage. Said policy or policies shall cover loss or liability for damages in an amount not less than one million dollars (\$1,000,000.00), for each occurrence/aggregate for bodily injury, death or property damage occurring by reason of Concessionaire's operations in, on or about the Premises or the Airport. Such insurance shall be subject to increase in the amount of coverage as required hereafter by City or Host. Host and City shall be named as Additional Insureds on this policy.

**C. Extended Coverage Insurance.** Extended coverage insurance, or "all risk" coverage, including fire and lightning, vandalism and malicious mischief, excluding coverage for earthquake but including coverage for named windstorm and flood debris removal. Said extended coverage insurance shall cover all structural or other improvements installed by Host or Concessionaire in the Premises and all leasehold improvements, fixtures, furnishings, equipment and decorations kept, furnished or installed by Concessionaire or Host in the Premises. Such insurance shall be in an amount equal to the full replacement value of all such items with the policy or policies containing a loss payable endorsement in favor of Concessionaire, Host and City as their respective interests may appear.

**D. Builder's Risk Insurance.** Builder's risk insurance, in the event that Concessionaire undertakes any construction responsibilities with respect to the Premises, in a form and amount as may reasonably be required by Host.

**E. Liquor Liability Insurance.** If applicable to Concessionaire's operations hereunder, Liquor Liability Insurance in an amount no less than one million dollars (\$1,000,000.00). Host and City shall be named as Additional Insureds on this policy.

**F. Excess or Umbrella Coverage.** In addition to the primary coverages listed above, the Concessionaire will maintain an umbrella or excess liability policy in an amount no less than five million dollars (\$5,000,000.00). Host and City shall be named as Additional Insureds on this policy.

Concessionaire shall furnish certificates from the insurance carrier or carriers showing the aforesaid insurance policies to be in full force and effect during the term of this Sublease. Each such policy and certificate shall contain a provision or endorsement that the policy may not be canceled,

terminated or materially modified without giving at least sixty (60) days prior written notice thereof to Host and City. The foregoing insurance requirements do not limit Concessionaire's liability or indemnification responsibilities set forth elsewhere in this Section.

#### **18.05. Bonds.**

**A. Faithful Performance Bond.** Prior to Host's delivery of the Premises to Concessionaire, Concessionaire shall, at its own expense, deliver a surety bond ("Bond"), in the penal sum of twenty thousand dollars (\$20,000.00) (the "Initial Amount"), naming Host as obligee, to: Host International, Inc., 6905 Rockledge Drive, Law Dept., 7<sup>th</sup> Floor, Bethesda, Maryland 20817, Attn: General Counsel. A copy of said Bond shall be delivered to Host International, Inc., Charlotte Douglas International Airport Attn: Director of Operations.

The Bond shall be kept in full force and effect during the Term to ensure the faithful performance by Concessionaire of all the covenants, terms and conditions of this Sublease, including without limitation the payment of all Rent. After the end of each full or partial Sublease Year, Host shall review the Bond amount and Concessionaire shall, as required by Host, adjust the amount to the greater of (i) the then-current amount or (ii) the equivalent of the average of four-months' Percentage of Gross Receipts Fees during the immediately preceding Sublease Year; provided that the amount shall never be less than the Initial Amount stated above. The Bond shall be issued by a surety company approved by Host and shall be in such form as approved by Host. The surety company issuing the Bonds shall give Host notice in writing by registered mail at least sixty (60) days prior to an anniversary date of its intention not to renew the Bonds.

In lieu of the Bond, Concessionaire may provide Host with an irrevocable letter of credit ("Letter of Credit") from a commercial bank in an amount equal to the penal sum of the Bond, subject to the same requirements as a Bond as set forth herein. If Concessionaire chooses to provide such a Letter of Credit in lieu of the Bond, such Letter of Credit must be drawn on a bank acceptable to Host and must be in a form acceptable to Host.

**B. Construction / Labor & Material Payment Bond.** In the event that Concessionaire undertakes any construction responsibilities with respect to the Premises, Concessionaire shall provide Host with performance and payment bonds in the forms and amounts as may reasonably be required by Host and/or City.

**19. Damage or Destruction to Premises.** The provisions of the Agreement with respect to damage or destruction of the Premises are incorporated herein and shall apply under this Sublease as between Host and Concessionaire in the same manner as they apply under the Agreement as between City and Host.



## **20. Events of Default and Remedies.**

**20.01. Events of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default.

**A.** Concessionaire's cessation of operations at or abandonment of the Premises for a period of three (3) or more consecutive calendar days.

**B.** Concessionaire's assignment, sublease or transfer of this Sublease, in whole or in part, voluntarily or involuntarily, other than in accordance with the terms hereof.

**C.** Concessionaire's failure to make any payment of Rent or Additional Rent due hereunder, as and when due, if such failure shall continue for a period of ten (10) days after written notice from Host to Concessionaire.

**D.** Concessionaire's failure to make any payment of Rent or Additional Rent, as and when due, without the need of any notice to Concessionaire if within the previous twelve (12) months Host has already given two notices specifying a failure by Concessionaire to make such payments regardless of whether Concessionaire has cured such previous failures to make such payments.

**E.** Concessionaire's payment of any Rent or Additional Rent due hereunder with a check that is returned, unpaid, for any reason by Concessionaire's bank, after Concessionaire has previously made three (3) such payments at any time during the term of this Sublease, such default having no cure period.

**F.** Concessionaire's failure to perform any non-monetary obligations, if such failure shall continue beyond the Specified Cure Period (as defined below). If there is no Specified Cure Period for a failure to perform a particular non-monetary obligation, then the cure period for such a failure shall be the lesser of: a) twenty (20) days after written notice thereof specifying the non-monetary obligation not performed; or b) one half (1/2) of the applicable cure period set forth in the Agreement, it being understood and agreed that Host shall be entitled to exercise its rights as against Concessionaire hereunder prior to the time that City is entitled to act as against Host with respect to performance of said non-monetary obligation. Notwithstanding the foregoing, there shall be no cure allowed in the event of certain expressly identified or repeated defaults as set forth herein.

**G.** Concessionaire's (i) application for, consent to, or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be

adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within ninety (90) days of such filing); or (vii) permitting to continue unstayed and in effect for ten (10) consecutive days any attachment, levy, execution or seizure of all or a substantial portion of Concessionaire's assets or of Concessionaire's interest in this Sublease and/or the Premises.

**H.** Concessionaire's failure to make any payments as and when such become due (without the need of any notice to Concessionaire) on i) any loan or note from Host, its parent, subsidiaries, affiliates, successors and/or assigns; or, ii) any loan or note which is guaranteed by Host, Host's parent, subsidiaries, affiliates, successors and/or assigns.

**I.** Concessionaire's commission or omission of any act which constitutes an event of default under the Agreement.

**J.** The commission or omission by Concessionaire of any act which constitutes an event of default under any other agreement which Concessionaire has with Host, Host's parent, subsidiaries, affiliates, successors and/or assigns, including without limitation any other subleases under which Concessionaire operates at this and/or other Host locations. For the purposes of this Section 20.01(J), "Concessionaire" includes Concessionaire, or its parent, subsidiaries, affiliates, successors and/or assigns.

**K.** Concessionaire's commission or omission of any act which constitutes an event of default under any other agreement which it has with any third party which is necessary for Concessionaire to fulfill its obligations under this Sublease, including without limitation any franchise or license agreement under which it operates its business at the Premises.

**L.** Concessionaire's failure to comply with and/or fulfill any or all of the requirements herein with respect to ACDBE certification including, without limitation, those stated in Section 9. A default under this Subsection 20.01(L) has no cure period. In the event of such default, and without limiting any other rights or remedies of Host, Host may automatically terminate this Sublease upon notice to Concessionaire as set forth in Section 9 herein.

**M.** Concessionaire's failure to maintain any license or franchise agreement pertaining to Concessionaire's operations at the Premises.

**N.** Concessionaire's failure to comply with the Performance Standards beyond the specified cure period (the "Specified Cure Period"). For each such Event of Default, there shall be certain limits on

the number of times in a twelve month period that Concessionaire shall be entitled to cure such (the “Limit on Right to Cure”). If Concessionaire does not cure an Event of Default within its Specified Cure Period or if Concessionaire exceeds the Limit on Right to Cure for any such Event of Default, Host shall be entitled to all remedies against Concessionaire as such may arise hereunder or by operation of law. The Specified Cure Period and Limit on Right to Cure for each Event of Default related to Concessionaire’s failure to comply with the Performance Standards are as follows:

**1) Hours of Operation.** Failure to comply with the requirements regarding hours of operation shall constitute an Event of Default. Specified Cure Period is twenty-four (24) hours. The Limit on Right to Cure is two (2) events of default in any consecutive twelve (12) month period.

**2) Refurbishment of Premises.** Failure to comply with the requirements regarding refurbishment of premises shall constitute an Event of Default. The Specified Cure Period is thirty (30) days. There shall be no Limit on Right to Cure such events of default.

**3) Maintenance and Repair.** Failure to comply with the requirements regarding maintenance and repair shall constitute an Event of Default. The Specified Cure Period is fifteen (15) days. The Limit on Right to Cure is two (2) events of default in any consecutive twelve (12) month period.

**4) Operation of the Premises.** Failure to comply with the requirements regarding operation of the Premises shall constitute an Event of Default. The Specified Cure Period is three (3) days. The Limit on Right to Cure is two (2) events of default in any consecutive twelve (12) month period.

**5) Personnel.** Failure to comply with the requirements regarding personnel shall constitute an Event of Default. The Specified Cure Period is five (5) days. The Limit on Right to Cure is three (3) events of default in any consecutive twelve (12) month period.

**6) Service, Marketing, Advertising and Promotion Initiatives.** Failure to comply with any requirements regarding service, marketing, advertising and promotion initiatives shall constitute an Event of Default. The Specified Cure Period is five (5) days. The Limit on Right to Cure is one (1) Event of Default in any consecutive twelve (12) month period.

**20.02. Remedies.** Upon the occurrence of any uncured Event of Default, in addition to any remedies which Host may otherwise have at law or in equity, Host may exercise the following remedies at its sole option:

**A. Termination.** Host may terminate Concessionaire's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Concessionaire shall immediately surrender possession of the Premises to Host. In such event Host shall be entitled to recover from Concessionaire: (i) the worth at the time of award of the unpaid Rent and Additional Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent and Additional Rent which would have been earned after termination until the time of award exceeds the amount of such loss that Concessionaire proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent and Additional Rent for the balance of the term after the time of award exceeds the amount of such loss that Concessionaire proves could have been reasonably avoided; and (iv) any other reasonable amount necessary to compensate Host for all the detriment proximately caused by Concessionaire's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorney's fees, and any other reasonable costs. The "worth at the time of award" of the amounts referred to in subparts (i) and (ii) above shall be computed by allowing interest at ten percent (10%) per annum from the dates such amounts accrued to Host. The worth at the time of award of the amount referred to in subpart (iii) above shall be computed by discounting such amount at one (1) percentage point above the discount rate of the Federal Reserve Bank of New York at the time of award.

**B. Reletting or Assumption of Operation by Host.** Without terminating or effecting a forfeiture of this Sublease or otherwise relieving Concessionaire of any obligation hereunder in the absence of express written notice of Host's election to do so, Host may: i) relet the Premises or any portion thereof at any time or from time to time and for such terms and upon such conditions and rental as Host in its sole discretion may deem proper; or ii) assume operation of the Premises itself and for its own account. Whether or not the Premises are relet or used by Host, Concessionaire shall pay to Host all amounts required of Concessionaire hereunder up to the date that Host terminates Concessionaire's right to possession of the Premises. Such payments by Concessionaire shall be due at the times provided in this Sublease, and Host need not wait until the termination of this Sublease to recover them by legal action or otherwise. If Host relets or assumes operation of the Premises or any portion thereof, such reletting or assumption shall not relieve Concessionaire of any obligation hereunder, except that Host shall apply the proceeds actually collected by it from such reletting against amounts due from Concessionaire hereunder to the extent such proceeds compensate Host for non-performance of any obligation of Concessionaire hereunder. Host may execute any Sublease made pursuant hereto in its own name, and the sublessee thereunder shall be under no obligation to see to the application by Host of any proceeds to Concessionaire, nor shall Concessionaire have any right to collect any such proceeds. Host shall not by any re-entry or other act be deemed to have accepted any surrender by Concessionaire of the Premises or Concessionaire's interest therein, or be deemed to have terminated

this Sublease, or to have relieved Concessionaire of any obligation hereunder, unless Host shall have given Concessionaire express written notice of Host's election to do so.

**C. Liquidated Damages.** Without prejudice to any other remedy to which Host may avail itself in the event of any Event of Default, Host may collect agreed upon liquidated damages from Concessionaire, which Concessionaire shall pay upon receipt of written demand therefor, in an amount of two hundred dollars (\$200.00) for the first occurrence and in the amount of five hundred dollars (\$500.00) for any subsequent occurrence in the event that: (i) Concessionaire shall fail to comply with the requirements regarding hours of operation; (ii) Concessionaire shall fail to comply with the requirements regarding refurbishment of the Premises; (iii) Concessionaire shall fail to comply with the requirements regarding maintenance and repair of the Premises; (iv) Concessionaire shall fail to comply with the requirements regarding operation of the Premises; (v) Concessionaire shall fail to comply with the requirements regarding personnel; or (vi) Concessionaire shall fail to comply with the requirements regarding service, marketing, advertising and promotion initiatives.

**20.03. No Obligation or Liability of Host.** Host shall be under no obligation to observe or perform any covenant of this Sublease on its part to be observed or performed which accrues after the date of any default by Concessionaire hereunder. If Host elects to re-enter the Premises in the event of a default by Concessionaire, Host shall not be liable for any damages by reason of such re-entry.

**20.04. Rent During Unlawful Detainer.** In any action for recovery of the Premises commenced by Host against Concessionaire by reason of any default hereunder, the reasonable rental value of the Premises for the period of such action shall be deemed to be the amount of Rent, Additional Rent and other charges or payments to be made by Concessionaire under this Sublease for such period.

**20.05. Cumulative Rights.** The rights and remedies reserved to Host hereunder, including those not specifically described, shall be cumulative. Host may pursue any or all of such rights and remedies at the same time or separately.

**20.06. Impact of Termination.** The termination of this Sublease shall not relieve Concessionaire of any of its liabilities or obligations hereunder.

**21. Suspension, Abatement or Termination.** Any suspension, abatement or termination of the Agreement pursuant to its terms shall cause a like suspension, abatement or termination of this Sublease.

**22. Cessation of Subletting.**

**22.01. Surrender of Premises.** Concessionaire shall yield and deliver peaceably to Host possession of the Premises on the date of the cessation of the subletting, whether such cessation be by termination, expiration or otherwise. The Premises shall be left by Concessionaire in the condition required by the Agreement.

**22.02. Removal of Property.** Subject to the provisions of the Agreement, Concessionaire shall cause the immediate removal of all fixtures, equipment, decor, furnishings and signage from the Premises at the cessation of the subletting, and shall surrender the Premises in clean and slightly condition with any damage resulting from the removal of Concessionaire's property having been repaired. Concessionaire shall be liable to Host for Host's costs, plus a twenty percent (20%) administrative fee, for the disposal of any of Concessionaire's personal property and for the repair and restoration of the Premises if Concessionaire fails to perform such activities prior to cessation of the letting. Host will retain Concessionaire's faithful performance bond or other security instrument until such time as all covenants, terms and conditions herein are performed and all keys to the Premises are delivered to Host by Concessionaire and Host determines that the Premises are clean, slightly, and in good repair.

**22.03. Host Not Liable.** Host shall not be obligated to store, remove or dispose of Concessionaire's personal property. If any of Concessionaire's personal property is damaged, lost or stolen as a result of Host's storage, removal or disposal thereof, or as a result of Host's refusal to so store, remove or dispose of Concessionaire's personal property, Concessionaire shall hold Host harmless and shall not pursue any claim against Host for any damages caused thereby.

**22.04. Holding Over.** In the event of any unauthorized holding over by Concessionaire after the expiration or termination of this Sublease, Concessionaire shall pay as liquidated damages two hundred percent (200%) times the amount of all Rent and Additional Rent which was payable by Concessionaire immediately prior to such expiration or termination, prorated on a daily basis for the entire holdover period. In the event of any unauthorized holding over, Concessionaire shall also indemnify Host against all claims for damages by City or by any other tenant to whom Host may have subleased all or any part of the Premises effective upon the expiration or termination of this Sublease. Any such holding over, without Host's prior written consent, shall create only a tenancy at sufferance relationship with Concessionaire and shall not operate to renew or extend this Sublease for any period of time. Any holding over with Host's prior written consent shall create a month-to-month tenancy.

## **23. Public Use and Nondiscrimination.**

**23.01. Nondiscrimination and Assurances.** Concessionaire shall comply with all federal, state, and local laws, rules and regulations relating to nondiscrimination against employees, applicants for

employment, customers, subcontractors, employees and agents of Concessionaire, Host, City, and other users of the Airport.

In addition to and without limiting the foregoing:

(1) This Sublease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in the 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.

(2) 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, further, to cause those businesses to similarly include the statements in any further agreements.

**23.02 Right to Amend.** In the event that the Federal Aviation Administration, or its successors, requires modifications or changes in this Sublease as a condition precedent to the granting of funds for the improvement of the Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Sublease as may be reasonably required to obtain such funds; provided, however, that in no event shall Concessionaire be required, pursuant to this paragraph, to agree to an increase in the rent or other charges provided for hereunder or to change in the use (provided it is an authorized use hereunder) to which Concessionaire has put the Premises.

**24. Notices.** All notices required to be given hereunder shall be in writing and given by certified mail or by overnight courier service to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

<b>To Host</b>	<b>To Concessionaire</b>
Host International, Inc. 6905 Rockledge Drive Law Dept., 7 <sup>th</sup> Floor Bethesda, Maryland 20817 Attn: Real Estate/Leasing	Jace McKeighan DiCarlo Caserta & McKeighan PLC 20715 N. Pima Rd. Ste. 108 Scottsdale, AZ 85255 480-429-7544 <a href="mailto:jdm@dcmplaw.com">jdm@dcmplaw.com</a>

To Host	To Concessionaire
	<p><i>and</i></p> <p>Kind Hospitality Inc.            1225 North Gilbert Road            Mesa, AZ 85203            Tele. 480-696-3079            Attn: Nava Thuraisingam</p>
<p>with a copy to:            Host International, Inc.            Charlotte Douglas International Airport</p> <p>Attn: Director of Operations</p>	

In the event that delivery of notices to Concessionaire is unsuccessful notwithstanding good faith efforts on Host’s behalf to deliver such notices in accordance with the foregoing, whether such results from Concessionaire’s change of address without proper notice to Host, from Concessionaire’s refusal to accept delivery of any notices, or from any other cause, reason or purpose whatsoever, Host may give notices to Concessionaire by delivery thereof to the Premises. The effective date of service of any notice given shall be the date on which the notice is received, or, in the event that initial delivery to Concessionaire is unsuccessful, then the date of service shall be the date on which the notice is delivered to the Premises.

**25. Automatic Stay.** Concessionaire hereby agrees that, to the extent permitted by law, in the event Concessionaire shall (1) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (2) be the subject of any order for relief issued under such Title 11 of the U.S. Code as amended, (3) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (4) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, (5) be the subject of any order, judgment or decree entered by any court of competent jurisdiction, approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Host and/or City shall thereupon be entitled to relief from any automatic stay imposed by



Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of the rights and remedies otherwise available to Host and/or City as provided herein, and as otherwise provided by law.

## **26. Miscellaneous Provisions.**

**26.01. Exhibits.** All Exhibits to this Sublease are hereby incorporated into and made a part of this Sublease.

**26.02. Governing Law.** This Sublease shall be governed by and construed under the laws of the State of North Carolina.

**26.03. Waiver.** The failure of Host to insist upon the strict performance of any of the terms or provisions of this Sublease, or Host's failure or refusal to exercise any option, right or remedy contained herein, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by Host of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by Host. No delay or omission of Host to exercise any right or remedy shall be construed as a waiver by Host of any such right or remedy or of any default of Concessionaire. The acceptance by Host of Rent or Additional Rent shall not be a waiver of any preceding breach or default by Concessionaire of any provision hereof, other than the failure of Concessionaire to pay the particular Rent or Additional Rent accepted, regardless of Host's knowledge of such preceding breach or default at the time of acceptance of such Rent or Additional Rent payments, or a waiver of Host's right to exercise any remedy available to Host by virtue of such default.

**26.04. Accord and Satisfaction.** No payment by Concessionaire or acceptance by Host of a lesser amount than the Rent, Additional Rent and/or any other payments due hereunder shall be deemed to be in accord and satisfaction of the whole amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction of the whole amount due, and Host shall accept such check or payment without prejudice to Host's right to recover the balance of such amount due or to pursue any other remedy. Host may apply any partial sums received against any amounts due in its sole and absolute discretion.

**26.05. Broker's Commission.** Host and Concessionaire each warrant to the other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Sublease. Host and Concessionaire each agree to indemnify the other and defend and hold the other harmless from all liabilities arising from any claim by any broker or finder allegedly representing either of them, including, without limitation, the cost of attorneys' fees and costs in connection with the defense of such claim.

**26.06. Authority.** The parties represent and warrant that the officers executing this Sublease on behalf of their respective corporation, partnership or other entity are duly authorized to execute and deliver this Sublease on behalf of said corporation, partnership or other entity, and that this Sublease is binding upon said corporation, partnership or other entity in accordance with its terms.

**26.07. Severability.** If any portion of this Sublease shall be declared invalid by any law, order, decree or judgment of a court having jurisdiction over the parties and/or the subject matter hereof, this Sublease shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship on either party or constitute a substantial deviation from the general intent and purpose of the parties as reflected in this Sublease.

**26.08. Amendment.** This Sublease may only be amended or modified by a written agreement signed by both parties.

**26.09. Authorship.** The terms of this Sublease have been fairly bargained for after careful consideration by the parties; therefore, this Sublease shall be enforced, interpreted and construed without regard to its authorship, and no inference shall be drawn by the parties or any third party including any court, by virtue of its authorship.

**26.10. Certain Rules of Construction.** Although certain references herein to Concessionaire's required acts hereunder omit to state that such shall be performed at Concessionaire's sole cost and expense, each and every such act shall be performed or fulfilled at Concessionaire's sole cost and expense unless expressly stated to the contrary. The headings of Sections are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Sections nor do they affect this Sublease in any manner. Each and every obligation, covenant, condition and restriction herein contained shall inure to the benefit of and be binding upon and enforceable against, as the case may require, the successors and assigns of Host, and, subject to the restrictions hereof shall also inure to the benefit of and be binding upon and enforceable against any authorized assignee, transferee, sublessee or other successors in interest of Concessionaire. In this Sublease each of the neuter, feminine or masculine gender(s) includes the other or others, and the singular number includes the plural, wherever the context so requires. If more than one Concessionaire is named above, the obligation of each of such Concessionaires hereunder shall be and is joint and several. The word "including" as used in this Sublease shall not be used in an exclusive sense and instead shall have the meaning of "including without limitation."

**26.11. Specific Performance.** Nothing contained in this Sublease shall be construed as or shall have the effect of abridging the right of either party to obtain specific performance of any and all of the covenants or obligations of the other party under this Sublease.

**26.12. Time.** Time is of the essence of this Sublease.

**26.13. Reference to Sections of the Agreement.** The express reference in this Sublease to certain sections of the Agreement as applying to Host and Concessionaire herein does not imply that other sections of the Agreement do not apply.

**26.14. Force Majeure.** Reasons of force majeure which excuse performance of City or Host under the Agreement shall similarly excuse the performance of Host or Concessionaire under this Sublease.

**26.15. Quiet Enjoyment.** Concessionaire, upon paying all Rent and Additional Rent provided for herein, and upon observing and keeping all of the covenants, conditions and provisions of this Sublease on its part to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term, without hindrance or molestation by or from anyone claiming by, through or under Host, subject to the terms of this Sublease and the Agreement. The provisions of this Section and any and all other covenants of Host contained in this Sublease shall be binding upon Host and its successors only with respect to breaches occurring during its and their respective ownership of Host's interest hereunder.

**26.16. Assignment by Host.** Provided any assignee of Host assumes in writing all of Host's obligations under this Sublease and so notifies Concessionaire, Host may assign its interest in this Sublease during the term hereof and, thereafter, Host shall be released from all obligations and liability hereunder, provided that Host's assignee shall agree to recognize this Sublease and be bound by Host's obligations hereunder.

**26.17. Exculpation.** In the event of any default or breach by Host with respect to any of the terms, covenants and conditions of this Sublease to be observed and performed by Host, Concessionaire shall look solely to the estate and property of Host in the Location for the collection of any sum of money on a judgment, or for the payment or expenditure of any money under any decree of specific performance, injunctive or other equitable relief, or under any other judicial process requiring performance by Host of any obligation under this Sublease. No other property or asset of Host, Host's agents, incorporators, shareholders, officers, directors, partners, principals (disclosed or undisclosed) or affiliates shall be subject to levy, execution or other enforcement procedure for the satisfaction of Concessionaire's remedies.

**26.18. Unreasonable Withholding of Consent.** Concessionaire hereby waives any claim against Host which it may have based upon any assertion that Host has unreasonably withheld or unreasonably delayed any consent, and Concessionaire agrees that its sole remedy shall be an action or proceeding to

enforce any such provision or for specific performance, injunction or declaratory judgment. In the event of such a determination, the requested consent shall be deemed to have been granted. Concessionaire's sole remedy for Host's unreasonably withholding or delaying of consent shall be as provided in this Section.

**26.19. Definition of Host.** The term "Host" shall mean only the owner at the time in question of Host's present interest in the Premises and in the event of a sale or transfer of Host's interest in the Premises (by operation of law or otherwise), the transferor shall be and hereby is automatically and entirely released and discharged, from and after the date of such sale or transfer, of all liability in respect of the performance of any of the terms of this Sublease on the part of Host thereafter to be performed.

**26.20. Estoppel Certificates.** At any time and from time to time, upon not less than ten (10) days prior written demand by Host, Concessionaire shall execute, acknowledge and deliver to Host a written estoppel certificate(s) or affidavit(s) certifying or stating:

1. that the Sublease is unmodified and in full force and effect (or if there have been modifications, stating the nature of same);
2. the Rent Commencement Date and the Term Expiration Date;
3. the amount of the Minimum Annual Concession Fee and the date to which the Minimum Annual Concession Fee has been paid by Concessionaire;
4. the amount of any Security Deposit;
5. whether or not to the best of knowledge of Concessionaire, Host is in default in the performance of any covenant, agreement or condition contained in this Sublease, and, if so, specifying each such default of which Concessionaire may have knowledge;
6. that Concessionaire has no right to setoff and no defense against payment of the Rent, stating the address to which notices to Concessionaire should be sent; and
7. such other matters as may reasonably be requested by Host.

Any such certificate delivered pursuant to this Section may be relied upon by Host, any financial institution or any assignee or prospective assignee of Host's interest in this Sublease. If Concessionaire fails to deliver the certificate within the five (5) days after Host's written demand

therefor, Concessionaire by such failure shall irrevocably constitute and appoint Host as its attorney-in-fact to execute and deliver the certificate(s) to any third party.

**26.21. Airport Variables.** Passenger counts, passenger flows and other customer traffic are predominantly dependent upon airline schedules and gate utilization. Such may also be affected from time to time by construction undertaken by City or its agent to improve the Airport. Also, FAA rules and regulations governing security and emergency situations may restrict access to the different terminal buildings of the Airport. Accordingly, Host makes no warranties, promises or representations as to the economic viability of the Premises and the business to be operated by Concessionaire thereon, and Concessionaire shall hold Host and City harmless from and against any and all claims and/or damages which may arise from the foregoing variables.

**26.22. Entire Agreement.** This Sublease sets forth the entire agreement between the parties and there are no other agreements between the parties with respect to the terms of this Sublease, written or otherwise, except as set forth herein.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their duly authorized officers the day and year first above written.

HOST INTERNATIONAL, INC.

KIND HOSPITALITY INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESS:

WITNESS:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A" TO SUBLEASE**

**DESCRIPTION OR DEPICTION OF PREMISES**

**EXHIBIT "B" TO SUBLEASE**

**MENU LIST**



## **ATTACHMENT 1 TO SUBLEASE**

### **FOOD AND BEVERAGE PURCHASING CONDITIONS**

1. Any arrangement for Host to sell products to Concessionaire shall not violate any confidentiality or “no resale” provision of Host’s contracts with suppliers.
2. Any resale arrangement is contingent on Host’s reasonable ability to obtain and maintain the appropriate licenses and follow the required regulations and processes to perform such services.
3. Any resale arrangement will apply only to food and beverage items that remain in the manufacturer’s original packaging and will exclude modified or production items, meat products, fresh seafood, fluid dairy, and fresh produce.
4. Concessionaire shall follow, without limitation, all industry standard food safety procedures such as the FDA Food Code and including but not limited to Concessionaire checking and recording temperatures upon receipt from Host, promptly putting all hazardous food in refrigerators and freezers, and fully cooperating in any and all recalls.
5. All pricing is determined by Host and is considered confidential information that shall not be shared with any third party other than Concessionaire’s accounting and legal firms, each of which must be subject confidentiality agreements which protect against the disclosure of Host pricing information and copies of which confidentiality agreements shall be provided to Host.
6. Any resale arrangement is at-will for both parties and may be discontinued with reasonable notice to the other party, or as otherwise determined by Host.
7. Concessionaire shall provide resale certificates and any other regulatory information reasonably required by Host.
8. Concessionaire shall give no less than 30 days’ notice of any planned significant change in purchasing volumes.
9. Concessionaire agrees to be obligated to any same performance requirements to which Host is obligated or Host may determine if will not resell such product to Concessionaire.

**ATTACHMENT 2 TO SUBLEASE**

**ACDBE NO CHANGE DECLARATION**

Name of ACDBE Firm which is the Concessionaire under the Sublease:

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Name of ACDBE Firm Owner:

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I, the above-named ACDBE Firm Owner, declare and certify on behalf of Concessionaire the following as of the date of this Declaration:

1. There have been no changes in Concessionaire's circumstances affecting its ability to meet the requirements of 49 CFR Part 26 and Part 23.
2. There have been no material changes in the information provided with Concessionaire's application for ACDBE certification except for any changes about which Concessionaire has provided written notice to the appropriate recipient(s) as required pursuant to 49 CFR Part 26.
3. The Certifying Entity, as defined in Section 2.02 of the Sublease (*check one*):  
  
 does  
  
 does not  
provide Annual Update approval letters, as defined in Section 9 of the Sublease.
4. Concessionaire has not received any notice of change in status from the Certifying Entity.
5. Concessionaire is solely responsible for the content, accuracy and sufficiency of (i) any documentation and information it provides to Host or any other party with respect to Concessionaire's ACDBE certification, and (ii) the information provided in this or any Declaration Form.

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Date

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Signature

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Printed Name