LEASE AND CONCESSIONS AGREEMENT:

FOOD, BEVERAGE, RETAIL AND FOOD/BEVERAGE VENDING

BETWEEN

FORT WAYNE-ALLEN COUNTY AIRPORT AUTHORITY

AND

FIRST CLASS CONSESSIONS, INC.

Effective May 1, 2010
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LEASE AND CONCESSION AGREEMENT FOR 
FOOD, BEVERAGE, RETAIL AND FOOD/BEVERAGE VENDING AT 
FORT WAYNE INTERNATIONAL AIRPORT

THIS LEASE AND CONCESSION AGREEMENT ("Agreement"), made and entered into this 30th day of March, 2010, by and between the Fort Wayne-Allen County Airport Authority, an Indiana municipal corporation having an address at 3810 W. Ferguson Road, Suite 209, Fort Wayne, Indiana 46809 ("FWACAA") and, First Class Concessions, Inc., a company incorporated in the state of California, with its office and address of 17261 Reflections Circle, San Diego, CA 92127 (P O Box 5010, PMB 23, Rancho Santa Fe, CA 92067) ("Company").

EXHIBITS

The exhibits listed below and attached to this Agreement are incorporated herein by this reference:

Exhibit “A” Request for Proposals for Food, Beverage, Retail and Vending Concessions at Fort Wayne International Airport ("RFP") and Company’s submittal (the “Proposal”)

Exhibit “B” Concession Areas

Exhibit “C” Street Pricing Comparables

Exhibit “D” Equipment, Fixtures and Furniture Owned by FWACAA

Exhibit “E” Insurance Requirements

Exhibit “F” Management Agreement for Operation of Alcohol Beverage Permit

RECITALS

A. FWACAA controls, operates, and maintains the Fort Wayne International Airport (hereinafter referred to as “Airport”);

B. The food, beverage, retail and vending (food and beverage) areas inside the terminal comprise a kitchen, storage, office, dining room, lounge, retail and public vending as shown on Exhibit “B” (the “Concession Areas”)

C. FWACAA has solicited competitive bids for provision of food, beverage, retail and food/beverage vending services in the public areas of the terminal building (the “Terminal”)

D. Pursuant to the described solicitation, Company submitted the Proposal dated December 9, 2009 to FWACAA;

E. On the basis of the Proposal, FWACAA has selected Company for award of this Agreement; and
NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

1.1 Contract Year

Contract Year shall mean each successive twelve (12) month period during the term hereof commencing May 1 and expiring April 30 of the following year.

1.2 Gross Revenue

1.2.1 General Definition

“Gross Revenues” includes, but is not limited to, all moneys and other consideration (cash, credit, barter, pre-paid, exchange or otherwise) generated or received by Company from its operations in the Concession Areas. Gross Revenue also shall include rent and commissions received by Company from its subcontractors, subtenants, agents, employees, representatives, sub-concessionaires or other customers, subtenant(s), joint venturer(s), and/or equity partner(s), (if any) for the conduct of its business pursuant to this Agreement or for any other use of the Concession Areas or the Airport by any person or entity, unless specifically excluded below. Such moneys or other consideration shall include, without limitation:

(a) All transactions entered into or finalized at the Airport, whether or not the Concession Areas were used at any point in the transaction such as caterings and shipping of retail products that originate from the Concession Areas;

(b) Transactions made at an off-Airport location, if the Concession Areas were used for any aspect of such transaction; and

(c) All orders taken at the Concession Areas by telephone, facsimile transmission, electronic mail, or other methods of communication regardless of whether actual delivery of the Service Category merchandise/product or other items is made or the service is performed at the Airport.

Gross Revenue shall include all such transactions, whether for cash or for credit, regardless of whether a final collection is made in credit transaction. Gross Revenues equal the total money or other consideration arising from the final transaction and are not limited to the value directly attributable to on-Airport operations. All money or other consideration shall be deemed received at the time of the transaction, whether for cash or credit. All transactions shall be immediately recorded utilizing an electronic cash register or point of sale terminal, computer or other electronic device which shall have sequential numbering of each transaction and shall provide detail information of units/items.
sold and the sale price of each item. Rebates, vouchers and similar adjustments given after the close of the transaction shall not be subtracted from Gross Revenues. For the purposes of this definition of Gross Revenues, “Company” shall include Sub-concessionaires and:

(a) Any entity or person that, directly or indirectly, controls, is controlled by or is under common control with Company; and

(b) Any successor to Company’s rights and obligations hereunder, whether through merger or consolidation or sale or purchase of stock; and

(c) Any assignee or transferee of all or any portion of Company’s rights and obligations under this Agreement.

For illustration purposes, Gross Revenues specifically shall include, without limitation: amounts generated by the sale, rental, storage, delivery, shipping, preparation of or provision of merchandise, fees, goods, products, services, directly billed labor, delivery charges, food, and beverages:

(a) For any Airport passenger, customer, Airport employee, or user, whether or not the sale, storage, delivery, shipping, preparation of or provision of such items or services occurs on-Airport;

(b) If any aspect of the sale, storage, delivery, shipping, preparation of or provision of such items or provision of such service occurs on-Airport;

(c) If by food/beverage vending machine or other mechanical device and such machines are provided by Company, where the vending machine or mechanical device is located on-Airport or, without regard to the location of the vending machine or other mechanical device, if any aspect of the sale, storage, delivery, shipping, preparation of or provision of such items or provision of such occurs on Airport;

(d) Amounts generated from pick-up and/or delivery of any item at the Airport, done directly by Company or its agents or indirectly through any third person or entity and from any services performed in relation to such pick-up or delivery, whether or not such items are prepared or made partially or entirely off-Airport;

(e) Amounts generated from any pick-up of any item at the Airport by any person or entity or delivery of any item from the Airport to any person or entity for the purpose of (directly or indirectly) delivering such item to any off-Airport location and from any services performed in relation to such pick-up or delivery, whether or not such items are prepared or made entirely on-Airport or are
made or prepared partially on-Airport and receive further preparation elsewhere;

(f) Amounts generated from other contracted services with other Airport tenants and users, or other third parties;

(g) Amounts realized from promotional accommodation or promotional services, retail display allowances, performance allowances, special purchase allowances, including the design and preparation of visual merchandising services and transparencies, or as a promotional or advertising allowance, credit, rebate or discount from Company’s suppliers;

(h) Other amounts and rentals arising from the Concession Areas or Company’s rights under this Agreement, including, but not limited to, amounts generated by allowing use of space, fixtures, improvements or equipment in the Concession Areas by any person or entity; or

(i) With respect to any loss of Gross Revenues, the full amount of any and all insurance proceeds that are paid on any gross earnings or gross revenues business interruption insurance policy to Company or any sub-concessionaire.

Company shall not modify accounting treatment of revenue or rename or redefine services or products in any manner in an attempt to deprive FWACAA of revenues that should, under the terms of this Agreement, be payable to FWACAA. Company agrees that any concession fee or other fees paid to FWACAA as a result of this Agreement that is passed onto Company’s customers shall not be shown on the invoice as a separate line item and shall be included in the pricing of the item(s) sold. Gross Revenue includes all charges and fees of whatsoever kind, for any of the Service Categories, regardless of when or whether paid, unless expressly and particularly excluded from Gross Revenue under this Agreement.

Gross Revenue includes all charges for the month in which the services are invoiced, regardless of when or if payment therefore is received by Company. Company shall not adjust Gross Revenue based on discounts (except employee discounts), rebates, losses, credits or similar items. Register tapes shall be retained by Company to support employee discounts and rebates.

1.2.2 Sole Exclusions

Gross Revenue excludes only:

(a) Charges to Company’s customers for federal, state, county or municipal transaction privilege (sales) taxes separately stated on the sales slips and
payable by Company to the taxing jurisdiction specifically identified as such, now in effect or hereinafter levied;

(b) Customer credit card and cash refunds given for meals rejected or goods returned by customers;

c The sale or trade-in value of any furniture, fixture, or equipment used in the Concession Areas and owned by Company;

d The receipts from the sale of any items to another operation or affiliate of Company, whether or not located on the Airport, where such sale is incidental and not made for the purpose of circumventing the terms of this Agreement;

e Sale of uniforms or clothing, at Company’s cost, when such uniforms or clothing are required to be worn by Company’s employees;

f Amounts received by Company to provide meals to Company’s employees;

g Any and all gratuities given by any customer to any employee of Company or any sub-concessionaire for any services rendered at or from the Concession Areas;

h Amounts and credits received for Service Category products returned to shippers, wholesalers or manufacturers;

i All Funds received by Company from its sub-concessionaires for maintenance or any co-used areas; and

j The discounted portion off the retail sales price of any Service Category product. Company shall provide a discount of Twenty Percent (20%) to all caterings provided to FWACAA. All such revenue shall not be included in Gross Revenue reported to FWACAA.

1.3 Minimum Annual Guarantee (MAG)

The Minimum Annual Guarantee, or MAG, shall be the amount shown in Section 4.1 of this document or as otherwise provide for herein.

1.4 Percentage Rent

Percentage Rent shall be the percentage of Gross Revenue (as defined in Subsection 1.2) per Service Category as shown in Section 4.1 of this document or as otherwise provide for herein.
1.5 **Total Annual Rent**

Total Annual Rent “Rent” shall refer to the greater of the Minimum Annual Guarantee (MAG) or the Percentage Rent payable in a Contract Year.

2. **LEASED CONCESSION AREAS**

2.1 **Designation of Space**

FWACAA hereby leases to Company and Company hereby agrees to lease from FWACAA the following Concession Areas, which, collectively, are hereinafter called the “Concession Areas” as shown on Exhibit “B”. The Concession Areas includes the following:

2.1.1 Kitchen, office, storage and food preparation areas;

2.1.2 Dining room, lounge and serving areas;

2.1.3 Retail areas; and

2.1.4 Vending areas for food and beverage offerings.

In addition, Company shall have the right to use common areas subject to prior approval from FWACAA, such as landscaped and paved areas, common corridors and lobby areas, and any other areas associated with the Terminal that are not designated for use by any other Airport tenant or user.

2.2 **As Is Condition**

Company has leased the Concession Areas after a full and complete examination of the Concession Areas, and has full knowledge of their present uses and non-uses. Company accepts the foregoing in the condition or state in which they are now without any representation or warranty, express or implied in fact or by law, and without recourse to FWACAA as to the nature, condition or usability or use to which the Concession Areas may be put. FWACAA shall not be obligated to provide any additional improvements or service of any type, character, or nature (including electrical, conduits, water, sewer, gas, HVAC, cooking exhaust systems or telephone outlets) on or about the Concession Areas other than those expressly provided in this Agreement. Company assumes the full and sole responsibility for the condition, operation, repair and maintenance of the Concession Areas.
2.3 Relocation

FWACAA reserves the right from time to time at its sole discretion to change the location or configuration of the Concession Areas. In the event FWACAA chooses to make such relocation or reconfiguration, the reasonable cost as determined by FWACAA in consultation with its contractors of the relocation or reconfiguration shall be paid by FWACAA (except for the relocation of vending machines). If FWACAA does decide to relocate or reconfigure any or all of the Concession Areas, FWACAA will make every effort to ensure that the relocation or reconfiguration will be to a comparable and mutually agreeable location, but reserves the final right to unilaterally change the location of any of the services provided by Company as deemed necessary by FWACAA and without recourse from Company. Any such relocation or modification in any manner at any time shall be without liability to FWACAA by reason of interference, inconvenience or annoyance to Company; provided, however, that all such work shall be done in such manner as to cause the least possible interference, inconvenience and annoyance to Company. Company agrees to cooperate with FWACAA in any such relocation and agrees to provide temporary facilities in order to serve its customers. FWACAA agrees to negotiate the concessions fees with Company during any such relocation or similar temporary condition.

3. TERM

This Agreement shall be binding upon execution, and the term and Company's obligation to pay fees hereunder shall commence on May 1, 2010 (hereinafter called the "Commencement Date"). The term of this Agreement shall thereafter continue for a period of seven (7) years until April 30, 2017.

Company’s failure to commence operations on the Commencement Date will result in inconvenience to the public and will adversely affect the operation of the Airport. Quantification of the resulting damages is difficult. Company therefore agrees to pay FWACAA liquidated damages in accordance with this Section at the rate of Five Hundred Dollars ($500.00) starting on and including the Commencement Date, that Company has not yet commenced operations in accordance with this Agreement. The parties agree that the liquidated damages set forth herein are reasonable estimates of the actual damages that would be incurred by the public and FWACAA for breach of the covenant to commence operations on the Commencement Date if such failure to commence was due to the actions or inactions of Company.

Each party shall have the right but not the obligation to extend the term of this Agreement for one (1) additional three (3) year term. For Company to exercise this option, Company shall not be in default under this Agreement and must be in compliance with the then applicable ACDBE requirements as established by the Federal Aviation Administration ("FAA"), which shall be amended into the Agreement before any extension is executed. Thereafter, FWACAA shall have the right at its sole discretion but not the obligation to extend the term of this Agreement for one (1) additional five (5) year term. For FWACAA to exercise this option, Company must be in compliance with the then
applicable ACDBE requirements as established by the FAA, which shall be amended into the Agreement before any extension is executed.

Each party shall exercise its option to extend the term of this Agreement by providing the other party written notice of such exercise at least one hundred eighty (180) days prior to the expiration of the then current term or any extension thereto.

All other provisions of this Agreement shall apply during any term extension(s).

4. RENT, FEES and STATEMENTS

4.1 Annual Rent

During each Contract Year of the Term, Company shall pay to FWACAA the Rent (as defined in Section 1.5) for the right to conduct this concession at the Airport in an amount equal to the greater of:

**M A G**: zero if enplanements are less than or equal to 200,000 for the prior calendar year

- 25 cents per enplaned passenger if enplanements are between 200,001-300,000 for the prior calendar year
- 26 cents per enplaned passenger if enplanements are between 300,001-350,000 for the prior calendar year
- 28 cents per enplaned passenger if enplanements are between 350,001-400,000 for the prior calendar year
- 30 cents per enplaned passenger if enplanements are 400,001 or greater for the prior calendar year

**OR:**

**Percentage Rent:** Flat 7% of Gross Revenues if enplanements are 150,000 or less for the prior calendar year
Flat 8% of Gross Revenues if enplanements are between 150,001 and 200,000 for the prior calendar year

<table>
<thead>
<tr>
<th>Prior calendar Year Enplanements</th>
<th>200,001-300,000</th>
<th>300,001-350,000</th>
<th>350,001-400,000</th>
<th>400,001 or greater</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food/beverage</td>
<td>10%</td>
<td>11%</td>
<td>11.5%</td>
<td>12%</td>
</tr>
<tr>
<td>Branded beverages</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>Alcohol</td>
<td>15%</td>
<td>15%</td>
<td>16%</td>
<td>16%</td>
</tr>
<tr>
<td>Retail</td>
<td>12%</td>
<td>13%</td>
<td>14%</td>
<td>15%</td>
</tr>
<tr>
<td>Vending</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Catering</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
</tbody>
</table>
• Percentage Rent per category above shall be based on Gross Revenues

• Branded beverages are those beverages that Company is required to pay royalty fees to the brand.

• Enplanements are defined as the number of passengers boarded at the Airport as defined by the Federal Aviation Administration and reported by authorized airline officials including charter and non-revenue passengers.

4.2 Monthly Payments

4.2.1 On the first day of each month of the Agreement Term, Company shall pay FWACAA the monthly MAG based on the prior year’s enplanements. Total enplanements for 2009 were 266,176 and therefore the MAG shall be Five Thousand Five Hundred Forty-Five Dollars and Thirty Three Cents ($5,545.33) per month for May 2010 – December 2010. The MAG to be paid each January shall be the same MAG paid in the immediately preceding month of December until the new MAG is determined. Each new annual MAG shall be calculated by FWACAA and communicated to Company by the 15th of January.

4.2.2 Company shall then:

Calculate the current month’s Percentage Rent of Gross Revenue as outlined in Section 4.1.

Company shall pay FWACAA within thirty (30) days the amount that the Percentage Rent is greater than the previously paid MAG for that month;

All payments shall be in lawful money of the United States, without deduction or setoff, at the offices of FWACAA or such other place as FWACAA may designate in writing from time to time.

4.2.3 FWACAA shall advise Company the prior years’ enplanements each January. The MAG and Percentage Rent paid by Company in the prior calendar year will be reconciled with the final yearly enplanement numbers; and Company shall pay FWACAA within thirty (30) days any variance between the MAG and Percentage Rent paid throughout the prior calendar year. If Company has overpaid, FWACAA shall apply the overpayment to the following month’s payment.
4.2.4 All other amounts due and payable by Company to FWACAA shall be paid within thirty (30) days after receipt of invoice therefore.

4.3 Monthly Statements

On or before the last day of the month following the month of activity, accompanying the balance owed (Percentage Rent Monthly Payment minus MAG), Company shall submit to FWACAA, in such detail and form as may be specified by FWACAA, certain information, including but not limited to a detailed schedule of the Gross Revenue and all applicable credits issued per Service Category by location. Said statement shall be signed by a responsible accounting officer of Company. FWACAA reserves the right to change the form of the monthly statement and to require the submission by Company of other information pertaining to the payments hereunder, and Company agrees to change the form of its statements to that requested by FWACAA and to provide any such additional information FWACAA may request.

4.4 Annual Accounting Statement and Adjustments

Company shall employ an independent certified public accountant who shall provide to FWACAA, within ninety (90) days after each Contract Year during the term of this Agreement, a written statement (the "Annual Accounting Statement") that in its opinion the Total Annual Rent paid by Company to FWACAA during such period was paid in accordance with the terms of this Agreement. Such statement shall contain: (1) a detailed schedule of all revenues by month, itemizing each item of revenue; (2) a detailed schedule of revenues upon which the monthly payments to FWACAA are computed; such schedule shall separately identify any exclusions from Gross Revenue provided for herein; (3) the amount of fees already paid by Company to FWACAA for such Contract Year; and (4) the amount, if any, by which the Total Annual Rent or any other amounts for such Contract Year has been overpaid or underpaid by Company. If such statement indicates that the Total Annual Rent or any other amounts for such Contract Year has been overpaid, then the amount of such overpayment shall be credited by FWACAA to the fees next due and owing from Company, unless the Term hereof has expired, in which event such amount shall be refunded by FWACAA to Company. Such credit or refund shall be issued by FWACAA as soon as reasonably practicable, allowing time for review of the Annual Accounting Statement. Company may not deduct any overpayment from fees owed to FWACAA until credit has been issued. If such statement indicates that the Total Annual Rent or any other amounts for such Contract Year have been underpaid, then Company shall pay to FWACAA within thirty (30) days the amount remaining due for such Contract Year, together with interest thereon at the rate of eighteen percent (18%) per annum from the date such amount should have been paid.
Notwithstanding any credit allowed by FWACAA, all annual accounting statements, payments and adjustments are subject to audit and further adjustment as provided in Section 5.4.

4.5 **Delinquent Reports or Rentals; Fees**

Without waiving any other right of action available to FWACAA in the event of default in the payment of any amounts due hereunder, or in the event that Company is delinquent in making any monthly payments, or monthly or annual statements as required under this Agreement, Company shall pay Two Hundred Dollars ($200.00) to FWACAA as liquidated damages for each occurrence.

The parties agree that this is a fair and reasonable estimate of FWACAA's costs incurred in processing delinquent payments. Payment shall be deemed received by FWACAA on the date it is received by FWACAA. FWACAA will take into consideration extenuating circumstances such as weather, natural disaster, holidays, etc. that may have impacted the delivery of such payments before any fee is assessed by FWACAA.

The parties agree that this is a fair and reasonable estimate of FWACAA's costs incurred in processing delinquent reports. The reports shall be deemed received by FWACAA (i) if sent by fax, on the date of the confirmation indicating successful transmission; (ii) if sent by email, on the date received by FWACAA; and (iii) if sent by regular mail, on the date date-stamped by FWACAA upon receipt.

4.6 **Obligation to Pay Rent**

Unless otherwise provided herein, the termination of this Agreement, by lapse of time or otherwise, shall not relieve Company of its obligation to pay any Rent or other charges that have accrued during the period in which this Agreement is in effect or Company has had the benefit of the Concession Areas as a holdover tenant or tenant at sufferance.

4.7 **Rent Start Date**

FWACAA recognizes that not all of the concepts can be designed, constructed and opened on the same date. Rent Start Date shall be the date each Service Category location is opened for service after any construction. The MAG shall be waived until such time that all Service Categories are operational. Percentage Rent shall be paid based on the Service Categories in operation for that month. Additionally, MAG shall be waived and Percentage Rent shall be paid by Company if at other times during the term of this Agreement other construction projects by Company are initiated that disrupt provision of services.
5. **BOOKS AND RECORDS**

5.1 *Books and Records*

Company shall keep full and accurate books and records showing all of its Gross Revenue hereunder and customarily used in this type of operation, in accordance with Generally Accepted Accounting Principles (GAAP). Company shall have a reasonable back-up and/or storage of data redundancy to insure sales data are always available and reliable. Books and records shall include without limitation all original accounting source documents detailing transactions relevant to this Agreement including but not limited to original sales receipts, a complete (cumulative) general ledger, monthly sales journals detailing each transaction for the month, other sales related documents, local municipalities and State of Indiana sales tax return records, and detailed backup documentation for all exclusions of Gross Revenue claimed by Company.

Company shall be capable of providing reports including but not limited to showing the segregation of sales categories; transactions in sequential order, day, month and year; and customer receipts showing the amount due, amount tendered and change due customer.

5.2 *Financial Accountability*

Company shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with management's authority, and that the financial records are reliable for the purposes of preparing financial statements. Company shall prepare financial statements in conformity with Generally Accepted Accounting Principles (GAAP), applying certain estimates and informed judgments, as required.

5.3 *Record Retention*

Company agrees to keep available all books and records of business conducted under this Agreement for the longer of six (6) months after completion of an audit by FWACAA or three (3) years after the end of the Agreement year to which the books and records pertain. If any audit has been initiated and audit findings have not been resolved at the end of the three (3) years, the books and records shall be retained until resolution of the audit findings.

5.4 *Review, Inspection, Copying, Examination or Audit*

FWACAA shall have the right through its representatives and upon prior written notice of a minimum of ten (10) calendar days to review, inspect, examine, copy and audit such books and records. Company shall make its original books and financial records available for review, inspection, copying, examination or audit by FWACAA or its authorized agent or representative, at reasonable times.
Company shall either transport the necessary books and records to a location at the Airport for review, inspection, copying, examination or audit, or permit FWACAA to perform an audit at the location where Company's books and records are located.

If Company fails to transport the books and records, at its sole expense, to a location at the Airport within twenty-one (21) calendar days after request by FWACAA, FWACAA reserves the right to perform the audit at the location where Company maintains the records, subject to Company paying expenses as provided for in this Agreement. If Company's place of business and record keeping is outside of Allen County, Indiana, and if Company elects to have FWACAA perform an audit at that location, Company shall pay FWACAA for the audit costs incurred. Audit costs include reasonable air and ground transportation, mileage, food, lodging and other miscellaneous costs associated with the audit. After the audit is completed, FWACAA shall bill Company for the costs incurred.

Company agrees to reasonably accommodate FWACAA's representatives by providing adequate workspace (including electrical outlets and phone access), allowing without charge photocopying of any records and documents, and allowing the interviewing of such employees and subcontractors as the FWACAA representatives deem necessary to conduct and support their audit.

The parties recognize FWACAA will incur additional costs if records requested by FWACAA's auditor are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the parties agree Company shall pay FWACAA Fifty Dollars ($50.00) per day for each record/retrieval not provided in a records request and in addition to all other contractual financial requirements. Payment will continue until specific performance is accomplished. Payment shall not be offset against any other amount due FWACAA as detailed in this Agreement.

5.5 **GAAS Standards Apply to Audit**

It is agreed that examination of the books, ledgers, journals and accounts of Company will be conducted in accordance with Generally Accepted Auditing Standards (GAAS) applicable in the circumstance and that as such, such examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Company. Deficiencies ascertained by applying percentages of error, obtained from such testing and sampling, may be applied by FWACAA to the entire period of reporting under examination and will be binding upon Company, and to that end shall be admissible in any court of law to prove any amounts due FWACAA.

5.6 **Over/Underpayments**

If any FWACAA review, inspection, examination or audit of Company's books and records discloses a Company underpayment, Company shall pay, within thirty
(30) days of the billing date, any underpayment disclosed by the audit plus (i) interest at a rate of eighteen percent (18%) per annum on the delinquent amount from the date such amount should have been paid; and (ii) any actual costs and attorney fees that FWACAA incurs to collect the underpayment. The failure of Company to make payment to FWACAA within this thirty (30) day period shall constitute a material breach of this Agreement and shall give cause to FWACAA for immediate termination hereof. If, as a result of such review, inspection, examination or audit, it is established that Company has understated the Gross Revenue received from all operations in the Concession Areas by five percent (5%) or more, the entire expense of said examination shall be borne by Company, including salary and benefit costs and allocated overhead of FWACAA personnel at the rate of Seventy Five Dollars ($75.00) per hour.

If FWACAA collects the difference through litigation, Company shall pay FWACAA's full costs and attorneys' fees incurred to collect the underpayment. Further, Company is liable for the full costs and attorneys' fees if FWACAA finds it necessary to take legal action either to liquidate any performance security under Section 12 or take other action deemed necessary to collect money owed to FWACAA by Company.

If the audit establishes that Company has overpaid FWACAA, then such overpayment shall be credited to Company within thirty (30) days of the approval of such credit by the appropriate FWACAA representative.

5.7 Additional Supporting Data

Company shall furnish FWACAA with other financial or statistical reports that FWACAA may occasionally request regarding the concession. This Section does not require Company to submit data that is either confidential business information or trade secrets unless reasonably related to determining compliance with this Agreement and FWACAA provides for protection of such information from public disclosure.

6. OPERATION OF CONCESSION

6.1 Service Categories

Company shall have the right and the obligation to operate an exclusive food, beverage, retail, and food/beverage vending concession, which collectively are hereinafter call the “Service Categories”, in the public portions of the interior of the Terminal at the Airport under the terms and conditions provided herein and Company hereby agrees to operate such a concession. Company acknowledges that airlines operating at the Airport have the right to provide food and beverages to their passengers on their aircraft. Company additionally acknowledges and agrees
to allow Terminal tenants to possess their own food/beverage vending machines in their exclusive leased areas for the sole convenience of their employees.

6.2 Operation

6.2.1 During the continuance of this Agreement, Company shall at all times maintain an adequate number of personnel and products for each Service Category to meet reasonable public demand, taking into consideration the varying seasonal requirements of the traveling public.

6.2.2 Company hereby acknowledges and understands that its primary obligation and FWACAA's primary purpose in entering into this Agreement is to provide well-managed, clean and efficient facilities, services and products to the public at the Airport. To carry out this obligation, Company shall use the Concession Areas and operate its business in compliance with all of the requirements of this Agreement. In particular, Company:

(a) Shall provide good, prompt, friendly, courteous and efficient service adequate to meet all reasonable demands of customers at the Airport;

(b) Shall ensure all areas of the Concession Areas at all times are clean, sanitary, orderly, and free of debris, pests and trash.

(c) Shall establish fair and reasonable prices and any other rates or charges and shall apply same on a uniform, non-discriminatory basis to all customers. All prices charged for products or services shall be no greater than ten percent (10%) of the same or substantially similar products and services sold at comparable Fort Wayne companies (as defined herein below). If a price is affixed on the product, the product shall be sold at the stated price. Products and services offered in each Service Category shall be comparable to the quality, portion and price as those offered at either Company’s other comparable Fort Wayne facilities (if a franchise or licensed brand) or shall be comparable to the quality, portion and price at three (3) comparable operations within the Fort Wayne market that are similar in concept, size and quality of food or products. The comparables shall be mutually agreed upon by Company and FWACAA staff. At the inception of this Agreement, the businesses listed on Exhibit “C” shall hereinafter be considered comparable for the purposes of implementing street pricing. Should any of these businesses cease operating or significantly change their offerings during the Term of this Agreement, Company and FWACAA shall mutually select replacement business(es). Company shall conduct comparisons each May and shall present its findings to FWACAA staff by the end of each May. If, at any time, FWACAA determines
that such prices vary outside of the range from those at comparable establishments in the Fort Wayne area as noted above, it may require, by written notice to Company, the lowering or raising, as the case may be, of such prices so that they will thereafter be comparable. Company shall, within fourteen (14) calendar days of such written notice, adjust prices as directed in said notice. When such compliance is required by FWACAA, Company shall be given a reasonable opportunity to defend against such requirements by FWACAA for a price or service change and be given an opportunity to justify the services furnished or prices charged therefor. However, the determination of FWACAA shall be final. If there is persistent failure by Company to comply with the pricing provisions hereof such failure shall constitute a default of this Agreement and FWACAA may terminate this Agreement in accordance with the provisions set forth in ARTICLE16:

(d) Shall allow a discount of up to Twenty Percent (20%) off the retail price of any Service Category product to Terminal tenants;

(e) Shall, unless otherwise authorized in writing by FWACAA, have open for business all Service Category areas the hours as follows:
Landside: food/beverage service one half (1/2) hour prior to the first departure until 6:00 pm; and gift shop Monday through Sunday 6:00 am until 7:00 pm. Airside: food and beverage service one (1) hour prior to the first departure daily until 7:30 p.m. (Note: all times are the then applicable Fort Wayne local times). These hours shall also apply to all holidays. Additionally, if airline operations are delayed beyond normal Company business hours, Company shall make every effort to ensure the customers are reasonably accommodated during any such delay, including extending Company’s hours of operation if necessary.

Notwithstanding the foregoing, when the “Scheduled Airline Departures/Arrivals” (as defined as the period commencing upon the first scheduled arrival of the day and ending after the last scheduled arrival of the day as set forth in the Fort Wayne Flight Schedule published monthly by FWACAA) is changed, Company will review and adjust its hours of operations to ensure the needs of the traveling public are met;

(f) Shall ensure that all food, beverages and goods in all Service Categories offered by Company at the Airport are fresh, clean, appealing, and of good quality that exceed the customers’ expectations including providing offerings for specialized dietary needs including but not limited to vegetarian and trans fat free foods;
(g) Shall review the offerings at least twice a year to ensure the offerings are meeting the needs and expectations of the customers and Company shall make changes accordingly after consultation with FWACAA staff;

(h) Shall provide a fully qualified, experienced and competent local manager to provide management and supervision, who shall coordinate all activities with FWACAA management. Such manager shall have complete responsibility for the day to day operations of the Company's operations including the management of all Company’s subtenants. Company shall ensure that at all times during which the manager may be absent, a qualified subordinate is available and empowered to act on any problems that may arise in the operation of Company's concessions;

(i) Shall provide fully trained and qualified sales and other personnel as are necessary to provide the highest standards of service to the public and to conduct Company's business in a professional manner at all times. All personnel shall be fluent in English, clean and without excessive jewelry, cologne, etc; and shall wear name tags and be neatly dressed and/or appropriately uniformed as required by FWACAA, except that management personnel need not be uniformed. Company shall control the conduct, demeanor and appearance of its employees, and upon objection by FWACAA concerning same, Company shall take all steps according to its policies and procedures necessary to resolve the cause of the objection;

(j) Shall maintain an adequate inventory of all products sold to meet all reasonable demands of customers and potential customers and take all reasonable measures to maintain, develop and increase on-Airport business;

(k) Shall arrange for the timely delivery of all goods, stock, and supplies, at such times, in such location(s) and by such routes as determined by FWACAA. Company shall make significant efforts to avoid using the public areas for large quantity deliveries during peak airline operations periods. Company shall be responsible for the return of all pallets, storage containers and other equipment belonging to its suppliers. Company shall monitor the movement of deliveries of merchandise to avoid conflict with other Airport functions and shall coordinate its use of the receiving areas with the use by other tenants or licensees of FWACAA, as determined by FWACAA. Delivery totes, pallets, etc. shall not be left in public areas unless they are being actively loaded or unloaded. Any containers moving through the public areas or common areas must be covered or otherwise protected and all carts used to move supplies and
equipment must be approved by FWACAA. Company shall maintain the receiving area in a safe and sanitary condition;

(l) Shall refrain from using subcontractors or subtenants to perform its obligations hereunder unless authorized in writing by FWACAA;

(m) Shall ensure that all employees who have contact with customers complete Company’s customer service training program prior to interaction with customers and possess valid licenses as applicable. Company shall provide FWACAA a copy of this program at the inception of this Agreement and shall promptly provide FWACAA any updates or changes to any aspect of the training program during the Term of this Agreement. FWACAA reserves the right to attend training sessions to review the quality of the training and to make recommendations for changes which it deems necessary. All such recommendations shall be implemented by Company;

(n) Company shall maintain a policy outlining the rules, regulations and operating procedures which apply to its employees including but not limited to accounting and handling of all transactions of merchandise, funds and services. This shall be submitted to FWACAA for its consent prior to the Commencement Date. Throughout the Term of this Agreement, Company shall provide FWACAA any updates to the policy that may be implemented;

(o) Shall meet with FWACAA yearly on or about the anniversary date of this Agreement to discuss and present operations, marketing and management plans. Such plans shall be subject to the approval of FWACAA. Company agrees to implement such plans and Company agrees to not deviate from the submitted plans without the prior written consent of FWACAA. Company agrees to participate in Airport marketing programs by providing such marketing materials as may be requested by FWACAA;

(p) Shall promptly provide FWACAA copies of all inspections from outside sources such as Company’s corporate offices, Board of Health or any other similar bodies;

(q) Shall provide by the tenth (10th) day of each month a list of the prior month’s complaints Company received, how Company responded to each complaint, and Company’s action plans to ensure similar complaints do not reoccur;

(r) Shall at its expense after written request from FWACAA have an independent entity perform mystery shopping or other similar customer assessments of Company’s operations at the
Airport to obtain customer input and to track customer satisfaction; and

(s) Shall maintain friendly, professional and cooperative relationships with all other concessionaires and businesses at the Airport, and refrain from engaging in open or public disputes, arguments, disagreements, conflicts or actions tending to be incompatible to the best interest of the public or the Airport.

6.2.3 Company shall not orally solicit business either from within Company’s Concession Areas or within or about the Terminal. Company shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous, or otherwise objectionable solicitation. Company may identify and advertise its offerings after such is approved by FWACAA. In no event shall Company place any signage, advertisement or other form of solicitation on top of or outside of the Concession Areas and all displayed materials shall be subject to the prior approval of FWACAA. All contracts, advertising, solicitation and publicity regarding Company shall be made in Company’s lawful name and shall not in any manner misrepresent the relationship between FWACAA and Company or FWACAA’s interest herein.

6.2.4 Company shall conduct its operations within the Airport in such a manner as shall reduce to the minimum that is reasonably practicable the emanation therefrom of noise, vibration, dust, fumes and odors so as not to interfere with the use of adjacent areas on the Airport.

6.2.5 Company shall comply, at its own cost and expense, with all applicable federal, state or local laws, ordinances, rules or regulations, and all rules or regulations of FWACAA now in effect or hereafter promulgated, which may be applicable to its performance under this Agreement or its provision of services on the Airport. Company shall display any permits, licenses or other evidence of compliance with such laws. Company shall not use or suffer or permit any person to use any of the Concession Areas for any purpose not in compliance with said laws, rules or regulations.

6.3 Other Business

Company covenants and agrees, except as may otherwise be provided in other contracts entered into between Company and FWACAA, that Company will not engage in any business at the Airport other than that permitted under the terms of this Agreement. Notwithstanding the foregoing, Company shall be permitted but not required to provide catering services to FWACAA, other Airport tenants and users as well as non-Airport users as long as such services do not in FWACAA’s sole opinion interrupt or detract from the Service Categories to the Airport as provided herein.
6.4 **Signs**

Company shall have the right to install and maintain appropriate signs in or upon the Concession Areas, provided that the design, installation, and maintenance of all signs shall be subject to FWACAA's signage guidelines and specifications and shall have the prior written approval of FWACAA. All signage shall be professionally printed. Handwritten signs are prohibited except for “daily specials” (or similar short term notices) that change on a frequent (no less than weekly) basis.

6.5 **Ingress and Egress**

Company shall have the rights of ingress to and egress from the Concession Areas over the Airport roadways, including the use of common-use roadways, subject to such rules and regulations now in existence or as may be established from time to time by FWACAA respecting such use, and subject to law.

6.6 **Employee Parking**

Company's employees, in common with other employees of tenants and users of the Airport, shall have the right to use reasonably convenient and adequate personal vehicular parking space provided by FWACAA, subject to the payment of the then-current charges therefore.

6.7 **Modification**

The described Concession Areas and rights and privileges to it may be modified by FWACAA to implement the purpose and intent of this Agreement. Company shall be consulted by FWACAA on matters that impact Company’s operations.

6.8 **Communications; Interference with Operations of FWACAA**

Company shall not install or have installed any data, telecommunications, video or radio equipment (wired or wireless) except as previously approved by FWACAA.

Company acknowledges that FWACAA has special safety and operational concerns regarding FWACAA's and other tenants’ communication ability at the Airport. Therefore, Company shall operate any and all of its communications equipment (wired or wireless) in a manner that will not cause interference to FWACAA's or other tenants’ operations of the Airport. Upon any notification from FWACAA, the Federal Aviation Administration or the police or fire departments of any interference caused by Company's operation, Company shall cease and desist all communications operations, transmissions and uses related to the Concession Areas.
Areas. Company may not resume communications operations until FWACAA has so notified Company in writing.

**6.9 Use of Concession Areas**

The Concession Areas shall be used only for the purposes specified in this Agreement. Company shall not at any time during the term hereof abandon any of the Concession Areas without the prior written consent of FWACAA.

**7. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION**

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, apply to this concession. It is the policy of FWACAA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. An ACDBE concession specific goal of Thirteen Percent (13%) of annual gross receipts as defined herein has been established for this concession. Company shall obtain ACDBE certification from the State of Indiana (“Indiana ACDBE Status”) no later than April 30, 2010 and shall remain eligible for the Company’s participation to be counted toward ACDBE goals throughout the term of this Agreement. Should Company fail to maintain participation eligibility, FWACAA shall have the right to terminate this Agreement.

**8. UTILITIES**

FWACAA shall provide the Concession Areas with heat and air conditioning to keep the Concession Areas at reasonable temperatures for the conduct of Company's activities. Company shall not modify the settings or controls on any heating or cooling equipment or thermostats without FWACAA's prior consent.

Until such time that the electric usage in the Concession Areas are billed to Company directly by the utility provider, FWACAA shall read the electric meter and shall bill Company for its electric use pursuant to Subsection 4.2.4.

At no time shall Company's use of electric current exceed the capacity of the wiring installation in place. If Company requires additional lighting, electrical power, telephone outlets, adjustments to the air conditioning system, or any other utility change or improvement, such change, additional improvement or service shall be subject to the prior written approval of FWACAA, and any such approved changes, improvements or services shall be made at Company's expense.

Company shall have the right, at its own expense, to request and receive telephone services or communications systems, provided that any such services or systems shall be
installed in accordance with the requirements of FWACAA and shall require the written approval of FWACAA before installation.

Company shall arrange for and pay directly all other utility and service contracts supplying the Concession Areas or in conjunction with Company’s operations including but not limited to television, gas, water, trash, garbage and cooking oil removal and disposal, deep cleaning, etc.

FWACAA reserves the right to institute a recycling program and Company agrees to participate and shall ensure its employees comply at all times. Company agrees to take all reasonable measures to reduce the amount of waste it generates.

9. ALCOHOLIC BEVERAGES, LIQUOR PERMIT AND SALES

FWACAA at its sole cost and expense shall obtain and maintain and hold the alcoholic beverage permit for the Concession Areas issued by the Indiana Alcohol & Tobacco Commission (the “Alcohol Permit”). As part of its restaurant operations, Company shall sell beer, wine and liquor, as FWACAA’s manager under the Alcohol Permit. The parties agree that Company’s role as manager under the Alcohol Permit shall be governed by the Management Agreement for Operation of Alcoholic Beverage Permit, which is attached hereto as Exhibit “F” and is incorporated herein. Company shall, as a condition subsequent to this Agreement, maintain its eligibility to manage the Alcohol Permit. Company shall at all times strictly comply with all legal and regulatory requirements of the Commission concerning the sale of alcohol and all requirements connected with the Alcohol Permit. Company shall notify FWACAA immediately upon receipt of notice of any violations or legal action against Company in connection with the Alcohol Permit or Company’s alcoholic beverage sales. All fines associated with any violations or legal actions due to Company’s sale of alcohol beverages shall be addressed immediately by Company at Company’s sole cost and expense. Company shall have no right to use the Alcohol Permit except pursuant to this Agreement as specifically set forth herein, and shall assist in signing of any necessary Manager’s Questionnaire in favor of another operator, should, in the sole discretion of FWACAA, the same be necessary, as directed by FWACAA.

10. LEASEHOLD IMPROVEMENTS; TITLE; AIRPORT IMPROVEMENTS

10.1 Leasehold Improvements/ Initial Investment by Company

10.1.1 In order to present a new and fresh image, and as valuable consideration for FWACAA to enter into this Agreement, Company agrees at the inception of this Agreement to invest at least Two Hundred Five Thousand Dollars ($205,000) in the food/beverage and retail space as outlined in Exhibit “A” of this Agreement, plus Fifteen Thousand Dollars ($15,000) in working capital. The minimum investment required herein shall not include financing costs, interest, inventory, pre-opening expenses or intra-company charges related to construction.
10.1.2 Company shall plan, design, and build out the Concession Areas at its sole cost unless provided for otherwise herein. All plans must be submitted to FWACAA for final written approval prior to the initiation of work. Company shall be responsible for coordinating design standards and the interface between the common public space and the Concession Areas with FWACAA’s architect to ensure coordination and consistency. Company shall ensure all construction is in accordance with all applicable codes and regulations and with the plans and specifications approved by FWACAA. Company shall obtain all required approvals and permits. After the completion of any construction during the term of this Agreement, Company shall provide FWACAA complete “as-built” plans in electronic and paper forms.

10.1.3 The construction process shall be accomplished causing as little disruption to the Airport and its tenants’ operations as possible. Delivery of materials, construction activities, debris removal and all other activities associated with the construction shall be coordinated through FWACAA staff. Along with the construction plans, Company shall include security and safety procedures to be approved by FWACAA prior to any construction.

10.1.4 Of the $205,000 initial investment, no more than $15,500 of which may be spent for design and engineering.

10.1.5 During such improvements, Company shall be required to continue to provide service to the public on a limited basis as is practical in the areas being refurbished. Rent during any construction shall be calculated as outlined in Section 4.7 herein. Company agrees to have all approved initial improvements excluding final punch list items substantially completed within one hundred eighty (180) days of the completion of FWACAA’s work as outlined in Section 10.2 below. Failure of Company to complete the improvements as approved and within the time frame agreed upon, may be cause for the assessment of Two Hundred Dollars ($200.00) per day, or in the case of persistent failure by Company shall constitute a material default of this Agreement and FWACAA may terminate this Agreement in accordance with the provisions set forth in Section 16 unless: FWACAA, by its action or inaction, is solely responsible for the delay of the completion of said improvements; or FWACAA grants a written extension of the completion date; or completion is delayed by Force Majeure.

10.1.6 Company shall provide, maintain and repair in the Concession Areas any improvements, facilities, decorations, signs, fixtures and equipment (the "Company Improvements") needed to carry on its operations and shall do so at its sole expense. Company shall, prior to installing or altering any Company Improvements, submit detailed plans, specifications and material lists to FWACAA for its approval and shall not proceed with any
construction, installation or alterations until FWACAA's written approval is obtained. FWACAA's approval of any Company Improvements shall not be unreasonably withheld, but may take into account any reasonable factor, including quality, attractiveness, safety features, and whether the Company Improvements are, in FWACAA's sole judgment, aesthetically pleasing and in keeping with the decor of the building and surrounding areas.

10.1.7 Company shall remove all Company Improvements at its expense from the Concession Areas prior to the expiration or earlier termination of this Agreement (as further specified in Section 16.4), leaving the Concession Areas in as good condition as they were at the time this Agreement was entered into, normal wear and tear excepted, except as provided in Section 10.4 herein.

10.2 FWACAA Improvements and Equipment

10.2.1 FWACAA is providing for Company’s use the kitchen equipment, furniture and other items as listed on Exhibit “D”. Company accepts such equipment in its “as is” condition. Company acknowledges such equipment is without warranty by FWACAA and Company accepts all responsibility and liability that may result from the use of FWACAA’s equipment. Company shall at its cost maintain and make all repairs to the equipment during the Term of this Agreement and at the termination of the Agreement, company shall relinquish all such equipment back to FWACAA in good, clean condition, normal wear and tear accepted.

If during the Term of this Agreement any of the FWACAA provided equipment is determined to be no longer repairable, Company and FWACAA shall mutually agree which of the parties shall fund the cost of the replacement (if replacement is required). Notwithstanding the foregoing, if it is determined that Company failed to maintain or did not keep the equipment in good order and repair, the replacement cost shall be borne by Company.

10.2.2 FWACAA shall at its cost provide for or perform the following work to prepare the Premises for Company:

**Landside:** Roughed in water, sewer, electric supply and any upgrades to the electrical supply if needed, and plumbing and drain lines for FWACAA’s and Company’s equipment pursuant to the construction documents; grid-type ceiling with basic florescent light fixtures and recessed lights as noted in the agreed upon drawings; construction or removal of glass or sheet rock walls; new sheet rock walls shall be taped and primed; FWACAA shall provide a security gate for the landside retail operations.
Airside: Roughed in water, sewer and electric supply and any upgrades to the electrical supply service if needed, and plumbing and drain lines for FWACAA’s and Company’s equipment pursuant to the construction documents; eight foot hood system and an sul system, grid-type ceiling with basic florescent light fixtures, and recessed lights as noted in the agreed upon drawings.

10.3 Leasehold Improvements/Mid Term Reinvestment

In addition to the minimum initial capital investment, Company shall refurbish and/or re-concept each location (except vending areas) prior to October 1, 2015 (the “Mid-Term Refurbishment”). Company shall expend no less than Five Thousand Dollars ($5,000) in the Concessions Areas. Company and FWACAA shall jointly determine appropriate refurbishments/re-concepts but, in the event of a disagreement, FWACAA’s determination of the scope and extent of the Mid-Term Refurbishment shall be final. All designs and expenditures related to the Mid-Term Refurbishment are subject to FWACAA’s approval. Additionally, if the initial three (3) year renewal option is exercised by either party, Company shall prior to October 31, 2017 expend no less than Fifteen Thousand Dollars ($15,000) in the Concessions Areas. Notwithstanding the foregoing, Company may at any time during the term of this Agreement request FWACAA’s consent for Company to perform other improvement or refurbishments.

10.4 Buyout Provision of Unamortized Improvements

If this Agreement is terminated by either party for any reason, FWACAA at its option may purchase from Company all of the Leasehold Improvements constructed pursuant to Section 10.1 of this Agreement at a price based on the original cost at the time of installation less depreciation as of the date of such termination, calculated on a ten (10) year straight line basis; and all Leasehold Improvements constructed pursuant to Section 10.3 of the Agreement based on the original cost of the Leasehold Improvement at the time of installation, less depreciation as of the date of such termination calculated on a five (5) year straight line basis. FWACAA shall not be required to close the purchase of the Leasehold Improvements if Company is unable to obtain a release from any lien permitted hereunder or is otherwise unable to convey the Leasehold Improvements to FWACAA free and clear of liens and encumbrances. FWACAA shall give notice of its election to purchase the unamortized improvements within sixty days (60) of the termination notice.

10.5 Title of Improvements and Warranties

All Leasehold Improvements, including the improvements completed or installed prior to this Agreement, made to the Concession Areas and
additions and alterations thereto made upon said Concession Areas by Company, shall be and remain the property of Company until the termination of this Agreement whether by expiration of the Term, cancellation, forfeiture or otherwise. Upon the termination of this Agreement, whether by expiration, cancellation, forfeiture or otherwise, unless provided for in Section 10.4 title to such Leasehold Improvements shall vest in FWACAA.

All improvements that are affixed in any manner to the building (for example but not limited to equipment that is wired directly or plumbed into the building, etc.) are hereby defined as “Leasehold Improvements” and become the property of FWACAA upon expiration or sooner termination of this Agreement. All non-affixed items are hereinafter referred to as “Trade Fixtures” (for example but not limited to cash registers, tables and chairs, moveable display cases, small wares, etc.) and shall remain the property of Company throughout the term and after the expiration of this Agreement unless otherwise provided herein or by separate agreement between the parties.

In the event of a dispute as to the affixed or non-affixed nature of any Leasehold Improvement or Trade Fixture, FWACAA’s determination shall be final.

Manufacturers’ warranties of all applicable Leasehold Improvements shall be assigned to FWACAA upon the termination of this Agreement for any reason.

10.6 Alterations and Improvements to Airport

Company acknowledges that from time to time FWACAA may undertake construction, repair, or other activities related to the operation, maintenance, and repair of the Airport, including the Concession Areas, which may temporarily affect Company's operations hereunder. Company agrees to accommodate FWACAA in such matters, even though Company's own activities may be inconvenienced, and Company agrees that no liability shall attach to FWACAA, its members, Directors, Officers, Board, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of FWACAA substantially impair the operations of Company under this Agreement, the MAG shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being determined at the sole discretion of FWACAA.

FWACAA may, in addition to the above, upon not less than sixty (60) days written notice to Company, reassign the Concession Areas herein, provided that the substituted facilities shall be reasonably comparable to the facilities designated above. Any such reassigned area shall be constructed at FWACAA’s cost and Company’s Leasehold Improvements in the former space shall be amortized as outlined in Section 10.4 above and Company shall be reimbursed or credited the then net book value of the leasehold Improvements in the former space.
11. MAINTENANCE OF CONCESSION AREAS

11.1 FWACAA Maintenance Obligations

11.1.1 General Maintenance and Operation

FWACAA agrees that it will with reasonable diligence prudently develop, improve, and at all times maintain, operate, and keep in good repair the Airport, including the Terminal (except Company shall be responsible for the Concession Areas as provided above, its routine cleaning and upkeep and for repairing any damage caused by its agents, employees, contractors or customers) and all appurtenances, facilities, and services now or hereafter connected therewith. FWACAA shall perform normal custodial duties in the Terminal common areas.

11.1.2 Structural Maintenance

FWACAA shall provide, or cause to be provided, structural maintenance of the Terminal.

11.1.3 Maintain Access

FWACAA shall, throughout the term of this Agreement, maintain all roads on the Airport giving access to the Terminal in good and adequate condition for use by cars and truck.

11.2 Company's Maintenance/Repair and Cleaning Obligations

11.2.1 Company's General Obligations

(a) Maintenance/Repairs: Company shall maintain and repair the Leasehold Improvements as well as any other equipment or fixtures installed (whether by it or by FWACAA) in the Concession Areas. Company shall be responsible for routine maintenance of equipment, fixtures and the Concession Areas. Maintenance and repair of the Concession Areas shall include but not be limited to painting, ceiling tile replacement, walls, floor coverings, doors, equipment, furnishings, fixtures, appurtenances, replacement of light bulbs and ballasts, and the replacement of all broken glass. All repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and conditions. Company shall promptly repair any damage to any area of the Concession Areas or Terminal common areas or the fixtures, improvements, or equipment therein caused by Company or any employee, agent, contractor or customer of Company.
(b) **Cleaning:** Company shall keep all of the equipment, fixtures and Concession Areas in a neat, clean, and attractive condition. Company shall be fully responsible for maintaining a pest control contract with a pest control firm. Company shall take reasonable care to avoid any unnecessary or excessive littering or soiling of the Concession Areas or Terminal common areas utilized under this Agreement.

### 11.2.2 FWACAA Sole Judge of Maintenance/Repairs and Cleaning

(a) **Maintenance/Repairs:** FWACAA shall be the sole judge of the quality of maintenance and repairs. FWACAA or its authorized agents may at any time, without notice, enter upon the Concession Areas to determine if maintenance and repairs satisfactory to FWACAA are being performed. If it is determined that said maintenance and repairs are not satisfactory, FWACAA shall so notify Company in writing. If said maintenance and repairs are not performed to FWACAA’s satisfaction by Company within thirty (30) calendar days after receipt of written notice, FWACAA or its agents thereafter shall have the right to enter upon the Concession Areas and perform the maintenance or repairs therefore and Company agrees to promptly reimburse FWACAA for the cost thereof as specified in the FWACAA Rates and Charges Ordinance.

(b) **Cleaning:** FWACAA or its authorized agents may at any time, without notice, enter upon the Concession Areas to determine if cleaning satisfactory to FWACAA is being performed. If it is determined that said cleaning is not satisfactory, FWACAA shall so notify Company in writing and if said cleaning is not performed to FWACAA’s satisfaction by Company within fifteen (15) calendar days after receipt of written notice, FWACAA or its agents thereafter shall have the right to enter upon the Concession Areas and perform the cleaning and Company agrees to promptly reimburse FWACAA for the cost thereof as specified in the FWACAA Rates and Charges Ordinance.

### 11.2.3 Hazardous Conditions

Upon discovery, Company shall immediately give oral notice to FWACAA’s Maintenance Department or Public Safety Department of any hazardous or potentially hazardous conditions in the Concession Areas or in or about the Terminal. Any hazardous or potentially hazardous condition in the Concession Areas that did not exist prior to the commencement of this Agreement shall be corrected immediately by Company at its expense upon receipt of oral notice from FWACAA. At the discretion of FWACAA, Company shall close the affected Concession Areas until such hazardous or potentially hazardous condition is removed. Rent and other fees shall not abate during any such
closures. FWACAA will respond to any hazardous conditions in the common areas of the Terminal Complex.

12 PERFORMANCE SECURITY

On or before the Commencement Date hereof, Company shall furnish an unconditional, irrevocable letter of credit or a performance bond, in a form reasonably acceptable to FWACAA, to insure the faithful and full performance by Company of this Agreement and to stand as security for the payment by Company of any valid claim by FWACAA against Company. The letter of credit or performance bond shall be drawn in favor of FWACAA upon a bank that is satisfactory to FWACAA and that is authorized to do business in Indiana. Such irrevocable letter of credit or performance bond shall be in an amount equal to Twenty Thousand Dollars ($20,000) and shall remain in effect without interruption during the Term of this Agreement and sixty (60) days thereafter. If the term of the letter of credit or performance bond is less than the Term of this Agreement, Company shall deliver to FWACAA written notice from the bank of its renewal no later than sixty (60) days before the stated expiration of the letter of credit or performance bond.

Nothing herein shall be construed to limit any other legal rights or remedies which FWACAA may have against Company.

13. INDEMNIFICATION AND INSURANCE

13.1 Indemnification

Company shall indemnify, defend and hold harmless FWACAA, and its members, Directors, Officers, Board, agents and employees from and against any and all claims, fines, damages, penalties, actions and all expenses, including reasonable attorneys' fees and related expenses incurred in the investigation and defense thereof (including statutory liability and liability under Worker's Compensation Laws) arising out of or related to Company's operations at the Airport and in connection with its rights and obligations contained herein, including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damages to any property which arises as a result of any act or neglect on the part of Company or its officers, partners, employees or agents; provided, however, that Company shall not be required to indemnify FWACAA for any injury or damage or loss occasioned by the sole fault or gross negligence of FWACAA or its Directors, Officers, Board, agents, members, servants and employees.

13.2 Insurance Required

Throughout the term of this Agreement, Company, for itself and its officers, representatives, agents, employees, guests, patrons, contractors,
subcontractors, licensees, invitees, and suppliers shall maintain in full force and effect the forms of insurance specified in Exhibit “E”.

In the event Company does not have the required certificate(s) of insurance or binder(s) evidencing the proper insurance coverage, or the required insurance coverage lapses, this Agreement shall immediately be terminated at FWACAA's option.

13.3 **FWACAA Protection**

No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreements or documents pertaining to the operations of Company hereunder, as such may from time to time be altered or amended in accordance with provisions hereof, or under any judgment obtained against FWACAA, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any Officer, Director, Board, employee or agent, as such past, present or future, of FWACAA, either directly or through FWACAA or otherwise, for any claim arising out of this Agreement or the operations conducted pursuant to it, or for any sum that may be due and unpaid by FWACAA. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any FWACAA Officer, Director, Board, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement or the operations conducted pursuant to it, or for the payment for or to FWACAA, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by FWACAA, is hereby expressly waived and released as a condition of consideration for the execution of this Agreement.

14. **ENVIRONMENTAL LAWS**

14.1 **Compliance**

Company, at its own expense, shall ensure that Company and Company's agents, employees, contractors, invitees, sublessees, and any third party that comes in contact with the Concession Areas comply with all present and hereafter enacted Environmental Laws, and any amendments thereto, affecting operations in the Concession Areas. Company shall not cause or permit any substance designated by the United States Environmental Protection Agency as an "Extremely Hazardous Substance" or "Toxic Chemical" to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Concession Areas, or transported to and from the Concession Areas. Company shall promptly notify FWACAA of any action or condition that is contrary to any prohibition in the previous sentence. "Environmental Laws" means any and all laws, rules, regulations, regulatory agency guidance and policies,
ordinances, applicable court decisions, and airport guidance documents, directives, policies (whether enacted by any local, state or federal governmental authority, or by FWACAA) now in effect or hereafter enacted that deal with the regulation or protection of the environment (including the ambient air, ground water, surface water and land, including subsurface land and soil), or with the generation, handling, storage, disposal or use of chemicals or substances that could be detrimental to human health, the workplace, the public welfare, or the environment. "Release" means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing, and actions of similar nature, including without limitation, the moving of any material through, into or upon any land, soil, surface water, ground water, or air, or otherwise entering into the environment.

14.2 Indemnity

Company shall indemnify, defend and hold harmless FWACAA, its successors and assigns, its employees, Directors, Officers, Board, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and costs (including legal and investigation fees or costs) arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any party or governmental authority of any kind, alleging or arising in connection with (i) contamination of, or adverse effects on the environment (whether known, alleged, potential, or threatened), or (ii) alleged or potential violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are brought as a result (whether in part or in whole) of any activity or operation on or Release from the Concession Areas (caused in whole or in part by any person or entity other than FWACAA) during the term of this Agreement. This obligation includes but is not limited to all costs and expenses related to investigation and/or cleaning up the Concession Areas and all land, soil and underground or surface water as required under law. Company's obligations and liabilities under this paragraph shall continue so long as FWACAA bears any liability or responsibility under the Environmental Laws for any action that occurred on the Concession Areas during the term of this Agreement. This indemnification of FWACAA by Company includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located in the Concession Areas or present in the soil or ground water on, under or about the Concession Areas. The parties agree that FWACAA's right to enforce Company's promise to indemnify is not an adequate remedy at law for Company's violation of any provision of this paragraph; FWACAA shall have all the rights and remedies set forth in this Agreement as well as all other rights and remedies provided by law.
15. DAMAGE OR DESTRUCTION

15.1 Damage

If any of the Concession Areas are damaged by fire or any other cause covered by a standard Fire and Extended Insurance Policy, FWACAA shall have the option to repair said damage at FWACAA's expense. If FWACAA elects to repair and the damage is such that the affected Concession Areas is not rendered untenantable, Company shall continue to pay the Fees and Rent herein provided. In the event of total destruction of any of the Concession Areas by fire or otherwise, or destruction or damage so extensive that the Concession Areas is rendered untenantable, or if FWACAA shall deem it necessary to rebuild the building or in the event FWACAA elects not to repair or rebuild, Company may then terminate this agreement by giving FWACAA ten (10) calendar days' written notice of its election to do so and within twenty (20) calendar days thereafter accounting for and paying the Fees and Rent accruing up to the time of said destruction. Both parties acknowledge time is of the essence regarding the above decisions and actions.

15.2 Limits of FWACAA's Obligations Defined

It is understood that, in the application of the provisions of Subsection 15.1, FWACAA's obligations shall be limited to repair or reconstruction of the affected Concession Areas and FWACAA's equipment as listed on Exhibit “D”. Company shall be obligated, at its sole cost and expense, to reconstruct, if necessary, all of its improvements and to replace, if necessary, all of its fixtures, signage and equipment. All such improvements, fixtures, signage and equipment shall be of quality equal to that originally installed by Company in the affected Concession Areas.

15.3 Damage or Destruction of Improvements

Should the Company's improvements, signage, equipment or fixtures, or any part of them, be destroyed or damaged, and if FWACAA elects to repair or replace under Subsection 15.1, they shall in all instances be repaired or replaced by Company whether or not said damage or destruction is covered by insurance. If Company fails to repair or replace such damaged improvements subject to a schedule approved by FWACAA, FWACAA shall have the right (but not the obligation) to make such repairs or replacement and recover from Company the cost and expense thereof as outlined in the FWACAA Rates and Charges Ordinance.
16. TERMINATION

16.1 Termination by FWACAA

FWACAA shall have the right to terminate this Agreement, by giving written notice to Company of such termination, upon or after the happening of one (1) or more of the following events:

16.1.1 If at any time during the term of this Agreement, (1) there shall be filed by Company in any court pursuant to any statute, either of the United States or of any other jurisdiction or state, a petition in bankruptcy, or insolvency, or for reorganization or adjustment of debts, or for the appointment of a receiver or trustee of all or a portion of Company's property, or (2) any such petition shall be filed against Company and not be dismissed within sixty (60) calendar days after such filing, or (3) if Company makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with its creditors; or

16.1.2 If Company shall fail to pay when due any fees or other payment required under the terms hereof and such failure shall continue for a period of thirty (30) calendar days following receipt by Company of written demand from FWACAA to do so; or

16.1.3 If Company shall default in the performance of any other term, covenant or condition to be performed under this Agreement or under that certain Management Agreement for Operation of Alcohol Beverage Permit executed by the parties contemporaneously herewith and shall fail to remedy said default within thirty (30) calendar days following receipt by Company of written demand from FWACAA to do so, or if by reason of the nature of such default the same cannot be remedied within such thirty (30) day period, Company shall have failed to commence the remedying of such default within said period or having so commenced, shall have failed thereafter to continue with diligence the remedying thereof; or

16.1.4 If Company assigns this Agreement without FWACAA's prior written consent; or

16.1.5 Company uses the Airport or any portion thereof for any illegal activity; or

16.1.6 Any action is commenced against Company to foreclose any lien or mortgage or other rights of Company in or to Company's Concession Areas that is not dismissed or discharged within sixty (60) days; or
16.1.7 Company willfully abandons or deserts the Concession Areas or willfully fails to operate continuously hereunder for three (3) consecutive days or more; or

16.1.8 Company does not continually maintain its ACDBE status as specified in Section 7 herein.

16.2 No Waiver

No waiver of default by FWACAA of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by Company shall be construed to be an act of waiver of any subsequent default. The acceptance of Fees or Rent by FWACAA for any period or periods after a default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by Company, shall not be deemed a waiver of any right on the part of FWACAA to terminate this Agreement for failure by Company to so perform, keep or observe any of the terms, covenants or conditions of this Agreement.

16.3 Termination by Company

Company shall have the right to terminate this Agreement at any time that it is not in default of its obligations by giving FWACAA within sixty (60) days written notice after the happening of any of the following events materially impairing the conduct of its normal business at the Airport:

16.3.1 Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining normal use of the Airport or any substantial part of it which injunction remains in force for a period of ninety (90) consecutive days; or

16.3.2 The lawful assumption by the U.S. Government or any authorized agency thereof of the operation, control or use of Airport or any substantial part thereof, in such a manner to substantially restrict Company for a period of at least ninety (90) calendar days from operating thereon; or

16.3.3 FWACAA shall default in the performance of any of the terms, covenants or conditions to be performed by it under this Agreement and shall fail to cure such default within a period of thirty (30) calendar days following receipt of written demand from Company to do so, or if by reason of the nature of such default the same cannot be remedied within said thirty (30) day period, FWACAA shall have failed to commence the remedying of such default within said thirty (30) day period, or, having so commenced, shall have failed thereafter to continue with diligence the remedying thereof.
16.4 Removal of Property

Provided that it is not then in default hereunder, Company may, within fifteen (15) calendar days after the expiration or sooner termination of this Agreement, remove its trade fixtures, signage, small wares, and personal property provided that such removal can be accomplished without material injury to the Concession Areas and Airport. Company, at its sole cost and expense and to FWACAA’s satisfaction, shall repair any damage caused to the Concession Areas and Airport as a result of such removal. Any such property not so removed by Company from the Concession Areas shall immediately become the sole property of FWACAA to be used or disposed of at FWACAA’s sole discretion. All costs incurred by FWACAA in the removal and/or disposal of any of Company’s personal property shall be charged to Company plus a fifteen percent (15%) administrative fee.

16.5 Early Termination

In the event that either party terminates this Agreement in accordance with the provisions of Subsection 16.1 or 16.3, such termination shall not affect such party's right to damages as a result of the other party’s default hereunder or any other remedy to which it is entitled by reason thereof. No such termination shall relieve a party of any obligation for the payment of fees or other charges due as of the date of such termination.

17. ASSIGNMENT

Company shall not sell, assign or transfer this Agreement or any of its rights and privileges hereunder or permit any such sale, assignment or transfer to occur by operation of law, or subcontract for the performance of any of the services to be provided by it hereunder, without FWACAA's prior written approval, which approval shall not be unreasonably withheld. If Company is a corporation, the issuance or the sale, transfer or other disposition of sufficient number of shares of stock in Company that results in a change in control of Company shall be deemed an assignment of this Agreement for purposes of this Section 17. If Company is a partnership, a transfer of an interest in the partnership which results in a change in the control of such partnership shall be deemed an assignment of this Agreement for purposes of this Section 17. Any assignee or transferee must meet the minimum qualifications for operators set forth in the Request for Proposals for Food, Beverage, Retail and Vending Concessions at Fort Wayne International Airport (Exhibit “A”) issued by FWACAA prior to award of this Agreement.
18. **WAIVER OF CLAIMS**

Company hereby waives any and all claims it now has or may hereafter have against FWACAA, its Board, Officers, Directors, and against any member, agent or employee for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. Company further hereby waives any and all claims for compensation for any and all resulting loss or damage sustained in making the Concession Areas available to Company; or by reason of any defects or deficiencies in the Concession Areas; or in any of the services thereto, including but not limited to, power, gas, telephone, heating, air conditioning or water supply system, drainage or sewage system. Company, also, hereby expressly releases FWACAA, its Board, Officers, Directors, and their respective members, agents, and employees from any and all demands, claims, actions and causes of action arising from any of such causes.

19. **REQUIRED AND GENERAL PROVISIONS**

19.1 *Reserved*

19.2 *Right to Amend*

In the event that the Federal Aviation Administration or the Transportation Security Administration or their successors require modifications or changes to this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for the improvements of the Airport, Company hereby consents to any and all such modifications and changes as may be reasonably required.

19.3 *Federal Aviation Administration Required Provisions*

19.3.1 Company agrees that in the event facilities are constructed, maintained, or otherwise operated in the Concession Areas for a purpose for which a Department of Transportation program or activity is intended or for another purpose involving the providing of similar services or benefits, Company shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as it may be amended.

19.3.2 Company agrees that: (i) no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination on the grounds of race, color, creed, disability, age, sex or national origin in the use of the Concession Areas or Company’s services; (ii) that in the construction of any improvements on, over, or under the Concession Areas and the furnishing of services thereon, no person shall be excluded from
participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, or national origin; and (iii) that Company shall use the Concession Areas in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as it may be amended.

19.3.3 Company attests that it will comply with pertinent statutes, Executive Orders and rules promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the concessionaire or its transferee for the period during which Federal assistance is extended to the Airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Airport sponsor or any transferee retains ownership or possession of the property.

19.3.4 Nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning 49 U.S.C. §§ 40103(e) and 47107(a)(4).

19.3.5 This Agreement and all the provisions hereof shall be subject to whatever right the United States government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

19.3.6 Company shall conform to FWACAA, Federal Aviation Administration and Transportation Security Administration safety and security rules and regulations regarding use of the Airport operations areas including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; shall complete and pass airfield safe driving instruction program when offered or required by FWACAA; and shall be subject to penalties as prescribed by FWACAA for violations of the Airport safety and security requirements.
19.3.7 Company shall furnish its services on a reasonable and not unjustly discriminatory basis to all users and charge reasonable and not unjustly discriminatory prices for each unit or service.

19.3.8 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Company agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award of performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23.

19.3.9 Company agrees to include the above statements in any subsequent concession agreement that it enters and cause those businesses to similarly include the statements in further agreements.

19.4 *Americans with Disabilities Act (1990)*

Company agrees to comply with the Americans with Disabilities Act (1990) as currently amended and any future amendments and regulations thereto with regard to Company's operations and use of the Concession Areas on the Airport.

19.5 *Right to Modify Agreement*

The parties hereto covenant and agree that, during the term hereof, this Agreement may be unilaterally modified by FWACAA, upon advice of its legal counsel, in order to conform to judicial, Federal Trade Commission or other applicable legal rulings or opinions. This Section shall not preclude Company from contesting said rulings or opinions, but Company shall abide by the unilateral change. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified by either party except in writing and signed by both parties.

19.6 *Remedies; Attorney Fees and Costs*

All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder. In the event that either party is permitted to and does institute proceedings in a court of law to enforce its rights under this Agreement, the prevailing party in such proceedings shall be awarded all costs incurred including reasonable attorney fees (as well as all costs and fees resulting from appellate proceedings).
19.7 Warranty of Company as to Conflicts of Interest

Company represents and warrants to FWACAA that no member, Officer, Director, Board, employee or agent of FWACAA has any interest, direct or indirect, in the business of Company to be conducted hereunder, and that no such person shall have any such interest at any time during the Term hereof.

19.8 Notices

All notices required or permitted to be given by FWACAA to Company hereunder shall be by regular United States certified mail, postage pre-paid, return receipt requested, or via overnight express delivery service, addressed to Company at the address shown on the first page hereof. All notices required or permitted to be given to FWACAA hereunder shall be given by United States certified mail, postage pre-paid, return receipt requested, or via overnight express delivery service, addressed to the Executive Director of FWACAA at the address shown on the first page hereof. Either party may change its address for purposes of this paragraph by written notice similarly given.

19.9 Regulation of FWACAA

The rights and privileges granted to Company hereunder and the occupancy and use by Company of the Concession Areas shall at all times be subject to the reasonable rules and regulations of the Transportation Security Administration, the Federal Aviation Administration local, state and federal governmental entities and FWACAA as the same are now or may hereafter be prescribed through the lawful exercise of their powers. It is understood and agreed that such rules and regulations under the direct control of FWACAA shall not increase the Rent and fees required under this Agreement.

19.10 Miscellaneous Provisions

19.10.1 Company and its employees shall promptly observe, and comply with applicable provisions of all published federal, state and local laws, rules and regulations which govern or apply to the services rendered by Company hereunder.

19.10.2 Company shall, at its own cost and expense, procure and keep in full force during the term of this Agreement all necessary licenses, registrations, certificates, permits and other authorizations as are required by law in order for Company to render its services hereunder, and shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed, levied, exacted or imposed by all governmental authorities having
jurisdiction, on Company's property, on its operations, on its Gross Revenue, on its income, on this Agreement and on the rights and privileges granted to Company herein, and on any improvements made by Company on the Airport. Company shall make and file all applications, reports and returns required in connection therewith.

19.10.3 Company agrees to promptly repair, at its sole cost and expense and in a manner acceptable to FWACAA, any damage caused by Company or any of its agents, employees, contractors or customers to the Airport or any improvements or property located thereon.

19.10.4 Company is not authorized to act as FWACAA's agent hereunder and shall have no authority, express or implied, to act for or bind FWACAA.

19.10.5 FWACAA, through its designated agents, shall have the right during Company's normal business hours (and at any time during an emergency) to observe Company’s operations or inspect the Concession Areas and the property of Company located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.

19.10.6 Company shall provide FWACAA emergency telephone numbers where FWACAA may reach Company and Company’s local manager on a twenty-four (24) hour basis.

19.10.7 The section and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

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

19.10.9 This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

19.11 Choice of Law

This Agreement, its application and interpretation, and all rights and obligations of the parties hereunder shall be governed by and construed exclusively in accordance with the laws of Allen County, State of Indiana, excluding any choice of law which would apply the laws of another jurisdiction.
19.12 Choice of Forum

Any disputes regarding this Agreement shall be exclusively resolved in the state or federal courts, as applicable, located in Allen County, Fort Wayne, Indiana. Each party consents to the exclusive jurisdiction of such courts and agrees not to bring any action under this Agreement except in Allen County, Fort Wayne, Indiana.

19.13 Entire Agreement

This Agreement and the exhibits attached hereto constitute the entire agreement between the parties hereto with respect to the subject matter hereof, and any other prior agreements, representations or statements made with respect to such subject matter, whether verbal or written, are null and void.

There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between FWACAA and Company other than set forth in this Agreement and in that certain Request for Proposals for Food, Beverage, Retail and Vending Concessions at Fort Wayne International Airport (RFP) to which this Agreement is that document’s Exhibit A.

If there is an ambiguity or inconsistency between the RFP and this Agreement, the documents shall be interpreted to be consistent, if possible. If such an interpretation is not possible, the Agreement shall prevail. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon FWACAA or Company unless in writing and signed by both parties.

19.14 Cancellation

This Agreement is subject to cancellation by FWACAA pursuant to Indiana Code 32-24-1-1 et seq.

19.15 Severability

If any provision of this Agreement is determined to be illegal or unenforceable, it shall not affect the enforceability of the remaining provisions of the Agreement.

19.16 Taxes

Company shall pay before delinquency any and all taxes levied or assessed as the result of its conduct of business at the Airport under authority of this Agreement, included but not limited to taxes related to sales, personal property, rights or possession, leasehold interest, and rights or interests in real property, including any such taxes payable by FWACAA.
19.17 Counterparts

This Agreement may be executed in counterparts which, when combined, shall collectively constitute the entire Agreement.

19.18 End of Agreement Transition

Whether this Agreement ends at the end of the Term or any extension thereto, or for any reason whatsoever prior to that date, Company shall fully cooperate with FWACAA and any subsequent provider to ensure products and services to customers are not unreasonably disrupted nor are the customers unreasonably inconvenienced due to the transition in service providers.

Company recognizes and acknowledges that FWACAA, on the termination of this Agreement for whatever reason, requires continuity in the conducting of the Service Categories. Company therefore irrevocably undertakes, upon termination of this Agreement, if required by FWACAA to:

19.18.1 Meet with FWACAA at such times prior to the termination of this Agreement and in such manner as FWACAA shall reasonably require, to negotiate the manner in which this Agreement shall be terminated and the delivery to FWACAA, or its nominee, by Company to ensure the continuity of conducting the Service Categories;

19.18.2 Use reasonable efforts to assist FWACAA to effect the orderly and uninterrupted transition of conducting the Service Categories;

19.18.3 Assist FWACAA and to provide advice to FWACAA in respect of specific service management issues;

19.18.4 Commit available resources to effect the transition;

19.18.5 For the purpose of this Section 19.18, allow FWACAA, the nominee or a new operator reasonable access to any employee(s) of Company who has been employed by Company in respect of providing the Service Categories;

19.18.6 Allow FWACAA, the nominee or a new operator, to make offers of employment to employees of Company who are, as at the termination of this Agreement, employed by Company for the purposes of conducting the Service Categories;

19.18.7 If requested by FWACAA, assign to FWACAA or a new operator all of the assignable contracts and licenses concluded between Company and third parties or other entities, in connection with the Service Categories;
19.18.8 Make appropriate training available to the employees and/or agents of FWACAA or the new operator; and

19.18.9 Agree with FWACAA the reasonable costs, including, but not limited, to overhead expenses and fees, payable to Company in respect of the functions and obligations undertaken by Company in terms of this Section 19.18.

By the end of the Agreement by either the elapse of the Term or early termination thereof, Company shall fully perform all of its obligations under this Agreement and shall return all keys, access cards, parking and security media, remove all personal property, and surrender the Premises in good and clean condition, ordinary wear and tear accepted. Failure to satisfy any of the above shall allow FWACAA at its sole discretion to treat Company as a holdover tenant or tenant at sufferance until such time that Company has fulfilled all of its obligations under this Agreement. The then current Monthly Payments shall continue during any such holdover or at sufferance period until all Company obligations have been satisfied as specified above.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
day and year first above written.

FORT WAYNE-ALLEN COUNTY AIRPORT AUTHORITY

By: ____________________________
    Torrance A. Richardson, A.A.E
    Executive Director of Airports

Date: __________________________

FIRST CLASS CONCESSIONS, INC.

By: ____________________________
    Tasneem P. Vakharia
    President

Date: __________________________

APPROVED AS TO FORM AND LEGALITY:

______________________________
F. L. Dennis Logan, Attorney
Fort Wayne-Allen County Airport Authority
EXHIBIT A

REQUEST FOR PROPOSALS FOR FOOD, BEVERAGE, RETAIL
AND VENDING CONCESSIONS
AT FORT WAYNE INTERNATIONAL AIRPORT (RFP”)
AND
COMPANY’S SUBMITTAL (“PROPOSAL”)
EXHIBIT B

COMPANY'S CONCESSION AREAS
EXHIBIT C

STREET PRICING COMPARABLE COMPANIES

FOOD, BEVERAGE AND BRANDED BEVERAGES (INCLUDING ALCOHOL):

1. Halls Tavern at Coventry
2. Applebee’s
3. Ruby Tuesday’s

VENDING: manufacturer’s suggested retail price (MRSP) or price market on the product
EXHIBIT D

FWACAA EQUIPMENT, FIXTURES AND FURNITURE
EXHIBIT E

INSURANCE REQUIREMENTS

Without limiting Company's indemnification of FWACAA, Company shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Company, its agents, representatives or employees. FWACAA shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of FWACAA, insurance provisions in these requirements do not provide adequate protection for FWACAA and for members of the public, FWACAA may require Company to obtain insurance sufficient in coverage, form and amount to provide adequate protection. FWACAA's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

I. INSURANCE REQUIRED

At all times during the Term of this Agreement (except as otherwise provided), Company shall obtain and maintain in full force and effect, with a company or companies authorized to transact the business of insurance in the State of Indiana, of sound and adequate financial responsibility, with a rating of at least A-, VII, from A.M. Best Co., in Best's Rating Guide, selected by Company and reasonably acceptable to FWACAA, the following insurance (either as part of any other policy or policies carried by Company, or separately):

A. Builder's Risk Insurance

During any construction in the Concession Areas by Company (whether new construction or remodeling, renovation, restoration or repair), Company shall keep, or cause the contractor performing such construction to keep, the improvements being built, remodeled, or restored, insured under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the improvements.

B. Liability Insurance

A comprehensive insurance policy or policies providing for the protection of Company against general liability, including all direct or contingent loss or liability for damages for bodily injury, personal injury, death or damage to property, including loss of use thereof, occurring on or in any way related to the Concession Areas or occasioned by reason of occupancy by and the operations of Company or any sublessee, guest or
invitee upon, in and around the Concession Areas including but not limited to any elevators and escalators therein and any sidewalks, streets or public walkways adjoining the Concession Areas, with limits of Three Million Dollars ($3,000,000) per occurrence for personal injury or death or damage to property, with coverage at least as broad as that provided by INSURANCE SERVICES OFFICE COMMERCIAL GENERAL LIABILITY COVERAGE form CG0001 (Occurrence Form), and such policy or policies shall cover all of Company's operations in the entire Concession Areas, including but not limited to any elevators and escalators therein and any sidewalks, streets or other public ways adjoining the Concession Areas.

C. Workers Compensation; Employers Liability

(1) Workers compensation coverage and limits as statutorily required by the state of Indiana and all other applicable states of operation.

(2) Employers Liability limits of at least One Million Dollars ($1,000,000) per accident.

II. DEDUCTIBLE AND SELF-INSURANCE RETENTION

Any deductible or self-insured retention that applies to any insurance required by this Agreement must be declared to and approved by FWACAA.

III. MODIFICATION OF REQUIREMENTS

FWACAA may adjust or increase liability insurance amounts and requirements as FWACAA deems reasonably necessary, or as may be required because of changes in the insurance requirements imposed by FWACAA's insurer or by applicable law. Company shall comply with such adjustments or increases within such reasonable time period as is requested by FWACAA.

IV. CERTIFICATES

Upon or prior to the commencement of the Term of this Agreement and at least annually thereafter Company shall furnish to FWACAA certificates of insurance showing the amount and type of the insurance then in effect that is required to be procured and maintained by it hereunder and stating the date and term of the policies. Company shall, upon request, supply FWACAA with certified copies of all applicable insurance policies, riders, endorsements and declaration pages. Certificates evidencing any renewal, replacement or extension of any or all of the insurance required hereunder, shall be delivered by Company to FWACAA not less than thirty (30) days prior to the expiration of any policy of insurance renewed, replaced or extended by the insurance represented by any such certificate. Each policy of insurance required hereunder shall provide for not less than thirty (30) days notice to FWACAA and Company before such
policy may be canceled or materially modified.

V. ADDITIONAL INSURANCE

The provisions of this Agreement as to insurance required to be procured and maintained shall not limit or prohibit, or be construed as limiting or prohibiting, FWACAA or Company from obtaining any other or greater insurance with respect to the Concession Areas or improvements thereon or the use and occupancy thereof that either or both of them may wish to carry, but in the event FWACAA or Company, as the case may be, shall procure or maintain any such insurance not required by this Agreement, the cost thereof shall be at the expense of the party procuring or maintaining the same.

VI. ADDITIONAL INSUREDs

All commercial general liability required by this Article shall be procured and maintained in the name of Company and shall add FWACAA, its Directors, Officers, Board, members, employees and agents as additional insureds as their interests appear. All policies required under this Article for property and builder's risk insurance shall provide for payments of the losses to Company and FWACAA as their respective interests may appear; provided that during the period of any construction, any builder's risk insurance carried pursuant hereto may provide for payment to the contractor, as its interest may appear.

VII. PRIMARY INSURANCE; CROSS LIABILITY; SEVERABILITY OF INTERESTS

All insurance policies required to be procured and maintained by Company, with the exception of Workers Compensation and Employers Liability shall provide or be endorsed to provide:

A. Company’s insurance coverage shall be primary insurance with respect to FWACAA, its Directors, Officers, Board, members, employees and agents. Any insurance or self-insurance maintained by FWACAA is excess of and noncontributing with Company’s insurance.

B. Company’s insurance coverage shall state that Company’s insurance shall apply separately to each insured except with respect to the limits of the liability and shall contain no cross-liability exclusions.

VIII. USE OF PROCEEDS

Proceeds of any liability and property damage insurance required under this Article shall be applied toward extinguishing, satisfying or remedying the liability, loss or damage with respect to which such proceeds may be paid.

IX. WAIVER OF SUBROGATION
Each party hereto waives all claims for recovery from the other party for any loss or damage to any of its property on or about the Concession Areas insured under valid and collectible insurance policies to the extent of any recovery collected from such policies. All policies required under this Article shall provide or be endorsed to provide that the insurer agrees to waive all rights of subrogation against FWACAA, its Directors, Officers, Board, members, employees and agents.

X. **INSURANCE BY FWACAA**

FWACAA may, upon written notice to Company, procure and maintain any or all of the insurance required of Company under this Article. In such event, all costs of such insurance procured and maintained by FWACAA on behalf of Company shall be the responsibility of Company and shall be fully reimbursed to FWACAA within ten (10) business days after FWACAA advises Company of the cost thereof.
EXHIBIT F

MANAGEMENT AGREEMENT FOR OPERATION
OF ALCOHOL BEVERAGE PERMIT
EXHIBIT F

MANAGEMENT AGREEMENT
FOR OPERATION OF ALCOHOLIC BEVERAGE PERMIT

THIS AGREEMENT, made and entered into as of the ____ day of March, 2010, by
and between Fort Wayne Allen County Airport Authority, (hereinafter referred to as
“Airport”) and First Class Concessions, Inc., (hereinafter referred to as the “Manager”).

WITNESSETH:

WHEREAS, the Airport is an Indiana municipality organized under the laws
of the State of Indiana and is authorized to hold and maintain an alcoholic beverage permit
issued by the Indiana Alcohol & Tobacco Commission; and

WHEREAS, Manager is an Indiana corporation authorized to manage a
commercial restaurant establishment which utilizes a permit such as that held by Airport in
the course of its business; and

WHEREAS, Manager has already entered into a certain lease agreement dated
____________________, 2010 with Airport, for the use of property located inside the Fort
Wayne International Airport terminal building at 3801 West Ferguson Road, Fort Wayne,
Indiana 46806 (hereinafter referred to as the “Lease”) for the operation of a restaurant and
bar located at the same address and Manager wishes to operate Airport’s three-way (beer,
wine and liquor) alcoholic beverage permit for the purpose of legally selling alcoholic
beverages to the public; and

WHEREAS, the Airport is located within the incorporated limits of the City of
Fort Wayne, Indiana, and as a result, a three-way permit such as that held by the Airport is
only available for use on Airport premises and no other three (3) way [beer, wine and liquor]
permits are available for purchase from the Indiana Alcohol & Tobacco Commission and
none are otherwise reasonably available on the open market at the present time;

WHEREAS, the Airport is willing to allow Manager, as an independent
contractor, to operate Airport’s alcoholic beverage permit pursuant to a management
agreement in the course of Manager’s restaurant and alcoholic beverage business, to manage
its restaurant and bar business located inside the passenger terminal building of the Airport.
NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable consideration, it is mutually covenanted and agreed by and between the parties hereto as follows:

ARTICLE I.
INCORPORATION BY REFERENCE

Section 1.01. The above and foregoing recitals are incorporated herein by reference as if fully set forth.

ARTICLE II.
ENGAGEMENT

Section 2.01. Subject to the terms hereof, the Airport engages Manager, as an independent contractor, and Manager accepts an engagement with the Airport, as an independent contractor, as the Airport’s manager to render such services for Airport at its restaurant and alcoholic beverage services business located inside the passenger terminal building of the Airport as shall be determined by the Board of Directors of the Airport. Manager’s duties, in addition to providing general restaurant and alcoholic beverage managerial services through the use of the Airport’s alcoholic beverage permit shall include, but shall not be limited to, operating, supervising and managing of Manager’s food and beverage service and the purchase, sale, use or other disposition of alcoholic beverages (i.e., beer, liquor or wine) under the terms and conditions of the Airport’s Type-221 Beer, Liquor and Wine Retailer Permit (“Permit”), #RR02-26903.

Section 2.02. Manager shall employ, discharge, supervise, and pay such agents, employees or servants considered by Manager as necessary for the efficient management of its restaurant and bar business. All employees of Manager shall at all times have and possess a valid “employee’s permit” as the same are now or may hereafter be issued by the Indiana Alcohol and Tobacco Commission. Copies of all such “employee permits” shall be obtained and maintained by Manager, as well as delivered to the Airport to be kept and maintained with the records of the Airport. Manager shall be liable to the Airport for the acts or omissions of such employees, all in accordance with the terms and conditions of this Agreement.

Section 2.03. Except as may be otherwise approved by Airport’s Board of Directors, Manager further covenants and agrees that as a condition to the obligations to the Airport hereunder:

(a) To devote its best efforts, knowledge and skill to its obligations hereunder;

(b) To remain in good standing with the Secretary of State of Indiana during the
term, or any extended term, of this Agreement;

(c) That all employees of Manager shall have and at all times possess all health, alcoholic beverage, employee or other permits or licenses as may be required by the laws of the State of Indiana, the United States of America, the applicable municipality and the rules and regulations of the Indiana Alcohol and Tobacco Commission.

ARTICLE III.
CONTROL OF SERVICES AND STATUS

Section 3.01. Manager shall have complete control over its food and beverage business including, but not limited to, the “bar”, “lounge” and “Permits”, which “bar”, “lounge” and “Permits” shall at all times remain, directly and indirectly, under the exclusive ownership and ultimate control of Manager, subject to the Airport’s continuing ownership of the alcoholic beverage permit. Manager agrees that its rendition of services hereunder shall be consistent with reasonable rules and regulations promulgated by the Board of Directors of the Airport dealing with such services as it relates to the applicable rules and regulations of the Indiana Alcohol and Tobacco Commission and understands that it may be in default if it fails to adhere to such rules and regulations.

Section 3.02. All services performed and rendered by Manager hereunder shall be of the highest professional standard and shall be performed to the Airport’s reasonable standards and satisfaction and in accordance with all of the terms and conditions of the Lease.

Section 3.03. Notwithstanding any other provision to the contrary elsewhere expressed herein, Manager’s status under this Agreement shall be that of an independent contractor, and not that of an agent or employee. Manager covenants, warrants and represents that it has complied with all federal, state, local and municipal laws regarding taxes, insurance (liability, dram shop and worker’s compensation), business permits, franchises and licenses that may be required of it to perform the services set forth in this Agreement.

Section 3.04. The Airport shall not be liable to Manager for any expenses Manager pays or incurs unless otherwise agreed to in writing by the Airport.

Section 3.05. Neither federal, state, local or municipal income tax, or any other payroll tax of any kind, shall be withheld or paid by the Airport on behalf of Manager or its employees. In accordance with the terms of this Agreement and the understanding of the parties herein, neither Manager nor its employees shall be treated as employees of the Airport with respect to the services performed hereunder for federal, state, local or municipal tax or other purposes.

Section 3.06. Because the Manager is engaged in its own independent contracting business, neither it nor its employees are eligible for, nor entitled to, and shall not participate in, any of the Airport’s pension, health or other fringe benefit plans, if any such plans exist.
Participation in such fringe benefit plans is limited solely to the Airport’s employees.

Section 3.07. Manager understands that it is responsible to pay its income, social security, property and any other taxes in accordance with all federal, state, local and municipal laws applicable thereto. Manager further understands that it may be liable for Social Security (“FICA”) tax to be paid in accordance with all applicable laws.

Section 3.08. Manager agrees to indemnify and hold harmless the Airport, its successors and assigns, of, from and against any and all loss, damage, cost, or expense, including attorney fees, by reason of Manager’s performance of its services for the Airport hereunder, all in accordance with the terms of this Agreement.

Section 3.09. Because Manager is engaged in its own independent contracting business and is not an employee of the Airport, the Airport will not obtain worker’s compensation insurance coverage for Manager or its employees. Manager agrees to obtain worker’s compensation insurance coverage for itself and its employees and to furnish a copy of its Certificate of worker’s compensation insurance to the Airport. Manager may be excused from obtaining worker’s compensation insurance coverage for itself if it establishes, warrants and represents to the Airport’s satisfaction that it is not required to obtain worker’s compensation insurance coverage under the Indiana Worker’s Compensation Act, as amended. Thus, if Manager can demonstrate to the Airport’s satisfaction that it is a sole proprietorship and is not incorporated, and if it is further able to show that it is exempt from the coverage requirements of the Indiana Worker’s Compensation Act, as amended, then it will not be required to produce a Certificate of worker’s compensation insurance. Under no circumstances, however, shall the Airport obtain worker’s compensation insurance coverage for Manager or its employees in the event that Manager is excused from obtaining worker’s compensation insurance coverage for itself.

Section 3.10. This Agreement shall, in all cases, be construed solely as an independent contractors’ agreement, and shall not be construed as a lease or license of such business, personal property, mixed property or real property (including, but not limited to, its furniture, fixtures, equipment and inventory). No legal rights shall accrue to Manager, except as otherwise provided in this Agreement.

Section 3.11. Manager shall promptly designate one (1) or more of its agents, servants or employees as its on-site manager or managers and shall promptly prepare for the Airport’s execution, and file with the Indiana Alcohol and Tobacco Commission, a Managers Questionnaire (Schedule MQ) designating such manager or managers as the on-site manager or managers of its restaurant and alcoholic beverage business as required under law in order to operate using the alcoholic beverage permit of the Airport in accordance with the terms and conditions of this Agreement.

Section 3.12. Manager, at its sole cost and expense, shall comply with all laws, ordinances, regulations and requirements of any and all federal, state, municipal or other governmental entities including, but not limited to, all rules and regulations of the Indiana Alcohol and Tobacco Commission, and shall obtain and maintain in good standing all licenses necessary for the operation of such restaurant and alcoholic beverage business
including, but not limited to, the Permit, and shall promptly pay all proper fees, expenses and charges in connection therewith; provided, however, that all costs and expenses for routine renewals of the Airport’s Permit shall be borne by the Airport. Manager shall pay all applicable taxes, including, but not limited to property taxes as well as sales, withholding and income taxes and file all appropriate reports necessary to keep the permit at all times in good standing with the Johnson County Treasurer, Indiana Department of Revenue, Internal Revenue Service, and/or any other state or federal taxing authority which may affect Airport’s permit if such required payments are not timely made. Manager shall further furnish the Airport with a full and complete copy of any such report filed with any taxing or regulatory authority at the time it is filed with such authority. The failure of Manager to timely furnish such reports to the Airport as required by this Section shall be considered a material breach of this Agreement which may subject Manager to termination pursuant to Article IX, infra. Manager shall not make or permit any use of such restaurant and alcoholic beverage service business or business premises or do or fail to do any act or thing or be in default under this Agreement in such a manner as may or would constitute a nuisance or as may or would invalidate or jeopardize the Permit of the Airport.

Section 3.13. Manager shall have no authority to enter into contracts or agreements on behalf of the Airport. This Agreement does not and shall not create a partnership, joint venture or other similar relationship between the parties.

ARTICLE IV.
CONSULTATION

Section 4.01. Manager, if it desires, may request the consultation, advice, and services of other managers and/or the Board of Directors of the Airport in rendering services hereunder. Manager shall not, at the expense of the Airport, supervise, control or consult with any person who is not a manager or member of the Board of Directors of the Airport concerning the rendition of services hereunder unless authorized to do so by such Board of Directors.

ARTICLE V.
CLIENTS, CUSTOMERS, RECORDS AND NONDISCLOSURE

Section 5.01. The Airport agrees that all customer, vendor, management, franchise and procedural records, reports, contracts, agreements, leases, licenses (other than the Airport’s alcoholic beverage permit) and other documents, data, materials and correspondence are and shall be the property of Manager; and that upon the termination of this Agreement, for any reason whatsoever, Manager shall be entitled to retain the same, subject, however, to the Airport’s right to obtain copies of any and all records of any kind directly bearing on the operation of its alcoholic beverage permit.
ARTICLE VI.
TERM OF AGREEMENT

Section 6.01. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall be effective for only so long as Manager continues to be bound by the Lease. Should Manager take any actions which, in the opinion of the Airport, would place its Lease in default or the Airport’s alcoholic beverage permit in jeopardy, such actions shall be construed to allow the Airport, at its sole option, to terminate this Agreement as a matter of law, with no further obligation to Manager.

Section 6.02. Following the termination of this Agreement, Manager shall fully cooperate with the Airport in all matters relating to the winding-up of Manager’s duties on behalf of the Airport and the orderly transfer of any such pending duties to other managers of the Airport’s food and alcoholic beverage service. The Airport shall have the specific right to prohibit Manager from the continued active performance of services for the Airport and to pay Manager the compensation due it, if any, for the remainder of any notice period.

ARTICLE VII.
PROHIBITION AGAINST ASSIGNMENT

Section 11.01. Manager agrees on behalf of itself and of its executors, administrators, successors, legatees, distributees and any other person or persons claiming any benefit under it by virtue of this Agreement, that this Agreement and the rights, interests and benefits hereunder, shall not be assigned, transferred, pledged or hypothecated in any way by Manager or by any executor, administrator, successor, heir, legatee, distributee or any other person or persons claiming under Manager by virtue of this Agreement except with the consent of the Airport which consent shall not be unreasonably withheld and shall not be subject to execution, attachment or similar process. Any attempt to assign, transfer, pledge, hypothecate or otherwise dispose of this Agreement or of such rights, interests and benefits contrary to the foregoing provisions, or the levy or any attachment or similar process thereupon, shall be null and void and without effect and, at the election of the Airport, shall relieve the Airport of any and all liability under this Agreement.

ARTICLE VIII.
CONFIDENTIALITY

Section 12.01. Pending and after the execution hereof, neither party to this Agreement,
nor any agent, servant or employee of any of the parties hereto, shall disclose the terms or conditions of this Agreement to any other person, firm, corporation, limited liability Airport, association or other entity, except as required by law or where necessary to carry this Agreement into effect.

**ARTICLE IX.**

**AGREEMENT TO PERFORM NECESSARY ACTS**

Section 14.01. Each party to this Agreement agrees to perform any further acts and to execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

**ARTICLE X.**

**MISCELLANEOUS PROVISIONS**

Section 15.01. Time. Time is and shall be of the essence of this Agreement and of each term or provision hereof.

Section 15.02. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law, unless to do so would clearly violate the present legal and valid intentions of the parties hereto.

Section 15.03. Corporate and Other Authority. This Agreement is executed by the Airport and Manager pursuant to resolutions duly adopted by their respective Boards of Directors.

Section 15.04. Benefit. This Agreement shall be binding upon and shall inure to the benefit of the Airport and Manager and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 15.05. Headings or Captions. The headings or captions of the Articles and Sections of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 15.06. Waiver of Breach. It is agreed by the parties hereto that no waiver of a breach of any of the terms, covenants and conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other term, covenant or condition.
hereof.
Section 15.07. Whenever required by the context, the singular shall be deemed to include the plural and the masculine to include the feminine and neuter, unless otherwise indicated by the context.

Section 15.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and contains all of the agreements between the parties with respect to the subject matter hereof; this Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereto this Agreement may be executed simultaneously in one (1) or more counterparts, each of which shall be deemed an original, but all of which together constitute one (1) and the same instrument; no change or modification of this Agreement shall be valid unless the same be in writing and signed by both the Corporation and Manager; and no waiver of any provision of this Agreement shall be valid unless in writing and signed by the person or party to be charged.

Section 15.09. Attorney Fees. Should either party bring suit to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover court costs and reasonable attorney fees.

IN WITNESS WHEREOF, the Airport and Manager have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

AIRPORT
FORT WAYNE ALLEN COUNTY
AIRPORT AUTHORITY

By: ____________________________
TORRENCE A. RICHARDSON, AAE
Executive Director of Airports

MANAGER
FIRST CLASS CONCESSIONS, INC.

By: _______________________________
TASNEEM P. VAKHARIA
President