

# GRAND JUNCTION REGIONAL AIRPORT



**C O L O R A D O**  
**AIRPORT of the YEAR**

**SPECIAL BOARD PACKET**

**February 1 , 2022**

**Grand Junction Regional Airport Authority**



**Date:** February 1, 2022

**Electronic Meeting**

**Link:** <https://us02web.zoom.us/j/84715770760?pwd=TVRIMWxVVlpPektCNnlxNTdFajNUQT09>

**Time:** 10:15 AM

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**SPECIAL BOARD MEETING AGENDA**

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**I. Call to Order**

**II. Approval of Agenda**

**III. Commissioner Comments**

**IV. Citizens Comments**

The Grand Junction Regional Airport Authority welcomes respectful public comments at its meetings. The Citizens Comment section is open to all individuals that would like to comment. If you wish to speak under the Citizens Comment portion of the agenda, please e-mail your comment to the Board Clerk (boardclerk@gjairport.com) 15 minutes prior to the meeting. Comments not related to specific agenda items will be addressed during the citizen comment section of the agenda. Citizen comments related to a specific action item will be addressed during the discussion of that action item. The Board Chair will indicate when you may come forward and comment. Please state your name for the record. Presentations are limited to **three minutes** and yielding time to others is not permitted. Speakers are to address the Chair, not each other or the audience, and are expected to conduct themselves in an appropriate manner. The use of abusive or profane language shall not be allowed. No debate or argument between speakers and/or members of the audience shall be permitted.

**V. Action**

- A. Amended and Restated Airport Facilities Lease and Concession Agreement \_\_\_\_\_ 1
  - Approve the Amended and Restated Airport Facilities Lease and Concession Agreement with Tailwind GJT, LLC and authorize the Executive Director to sign the Agreement.

**VI. Any other business which may come before the Board**

**VII. Adjournment**

# Grand Junction Regional Airport Authority

## Agenda Item Summary

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**TOPIC:** Amended and Restated Airport Facilities Lease and Concession Agreement

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**PURPOSE:** Information  Guidance  Decision

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**RECOMMENDATION:** Approve the Amended and Restated Airport Facilities Lease and Concession Agreement with Tailwind GJT, LLC and authorize the Executive Director to sign the Agreement contingent on receiving approval from the FAA.

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**SUMMARY:** Tailwind GJT, LLC (“Tailwind”) was originally selected through a competitive RFP process and has provided food, beverage, and retail concession services at the Airport since May 2016.

Tailwind has expressed a desire to make improvements to the facilities including the installation of a grease trap, grill and hood vent. These improvements will allow Tailwind to expand the food offerings and is expected to grow the non-airline revenue to the Airport. Tailwind has prepared a preliminary design and obtained rough estimates from a general contractor. The estimated cost of the improvements is approximately \$440k.

Tailwind has agreed to pay for the improvements in exchange for a 10-year lease extension. Staff feels this extension is reasonable given the size of the Tailwind investment and the nonairline revenue growth potential to the Airport. Furthermore, Tailwinds has been a steady partner to the airport, even and especially during the most stressful times of the pandemic and has been in good standing with the airport financially. GJRAA benchmarked the terms of our current agreement against 5 other airport concession agreements and used these comparisons to draft an amended and restated lease and concession agreement.

The proposed lease maintains the existing revenue share provisions but increases the base MAG from \$60k to \$120k and each year will adjust to 85% of the prior year revenue. The other material changes include additional requirements for the proposed investment, a mid-term refresh of the facilities, and updated federal provisions.

The agreement will require approval from the FAA prior to finalization due to the length of the term. Staff recommends accepting the proposed lease contingent upon receiving the FAA approval.

The following table represents the historical net revenue to the airport from restaurant and retail concessions by year from 2014 to 2021:

2021	\$ 183,000	2017	\$ 125,000
2020	\$ 92,000	2016	\$ 95,000
2019	\$ 171,000	2015	\$ 42,000
2018	\$ 142,000	2014	\$ 69,000

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**REVIEWED BY:** Finance Director and Legal Counsel

**FISCAL IMPACT:** N/A

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**ATTACHMENTS:** Amended and Restated Airport Facilities Lease and Concession Agreement

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**STAFF CONTACT:** Angela Padalecki  
970-852-1247

[Apadalecki@gjairport.com](mailto:Apadalecki@gjairport.com)

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**AMENDED AND RESTATED AIRPORT FACILITIES LEASE AND CONCESSION AGREEMENT**

**Grand Junction Regional Airport**

**Grand Junction, Colorado**

**Lessee: Tailwind GJT, LLC**

## AMENDED AND RESTATED AIRPORT FACILITIES LEASE AND CONCESSION AGREEMENT

THIS AMENDED AND RESTATED AIRPORT FACILITIES LEASE AND CONCESSION AGREEMENT, hereinafter "Lease", is made as of February \_\_\_\_, 2022, by and between the **Grand Junction Regional Airport Authority**, a political subdivision of the State of Colorado, hereinafter referred to as "**Lessor**", and **Tailwind GJT, LLC**, a Delaware limited liability company, hereinafter referred to as "**Lessee**":

### RECITALS

WHEREAS, Lessor is the owner and operator of the Grand Junction Regional Airport, located in the City of Grand Junction, Mesa County, Colorado (the "Airport"); and

WHEREAS, the provision of high quality and reasonably priced food, beverages, and retail items at the Airport are desirable for the proper accommodation of passengers arriving at and/or departing from the Airport; and

WHEREAS, Lessor desires to provide high quality and reasonably priced food, beverages, and retail items available at the Airport, and Lessee is qualified, ready, willing, and able to offer and perform such products and related services under the terms of this Lease.

NOW THEREFORE, for and in consideration of the fees, covenants, and agreements contained herein, as well as for other good and valuable consideration, it is agreed and understood between Lessor and Lessee:

#### I. DEFINITIONS:

As used in this Lease, the defined words and terms shall have the following meanings:

- 1.1 "Airport" is the Grand Junction Regional Airport located in the City of Grand Junction, Mesa County, Colorado
- 1.2 "Executive Director" means the person appointed by Lessor as the Executive Director of the Airport, or their designee(s).
- 1.3 "Terminal" is the Passenger Terminal Building at the Airport.
- 1.4 "Lease" is this Amended and Restated Airport Facilities Lease and Concession Agreement.

1.5 “Premises” consists of exclusive-use space leased to Lessee as described in subsection 2.3.

1.6 “Gross Revenue” is the entire amount of the actual sales price, whether wholly or partly for cash or on credit, of all sales of merchandise and services and all other receipts of all business conducted on or from the Airport, including all orders taken in or from the Premises, although said orders may be filled elsewhere, catering performed in whole or in part on the Airport, whether or not from the Premises, and sales by any authorized sub-lessee, Lessee in or from the Premises, and all without credit to Lessee for uncollected or uncollectable credit accounts. Each sale upon credit shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Lessee shall receive payment, whether full or partial, from its customer. There shall be excluded from Gross Revenue:

1.6.1 Any sums collected and paid out for any sales tax or other tax based on the sale of merchandise and required by law, whether now or hereafter in force, to be paid by Lessee or collected from its customers, to the extent that such taxes have been added to and included in the gross sales price; and

1.6.2 The amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by a purchaser and accepted by Lessee.

1.7 “Contract Year” means the 365-day periods (366 days for any leap years), commencing on May 1 and ending on April 30, at 11:59 p.m.

## II. USE OF AIRPORT FACILITIES

2.1 Operational Rights. Lessor hereby grants to Lessee, subject to all the terms, covenants and conditions of this Lease, the right, license and privilege, to the extent allowed by law, to operate food and beverage and convenience retail within the Premises (the operation of such food, beverage, and convenience retail within the Premises to be referred to herein as the “Concession”).

- 2.1.1 For purposes of this Lease, food and beverage concessions shall include sit-down, counter service, carry-out/take-away and food delivery service within the Terminal. Food and beverage concessions include the sale of beer, wine, spirits and mixed drinks for on-site consumption, provided Lessee has secured the appropriate liquor license from the authorized regulatory agency and maintains liquor liability insurance as part of, or in addition to, the commercial general liability insurance required hereunder. Convenience retail shall include the retail sale of merchandise including, for example and without limitation, newspapers, magazines, books, bottled water and other bottled and canned beverages, candy, pre-packaged snacks and similar food items, and souvenirs.
- 2.1.2 Lessee shall sell items consistent with those sold by Lessee at other airports of similar size and passenger demographics. Products sold should be sufficiently varied such that the range of needs of the traveling public are reasonably satisfied. The Executive Director reserves the right to approve items sold, and to engage in commercially reasonable discussions with Lessee to make modifications to the product offerings.

## 2.2 Prohibited Uses.

- 2.2.1 Lessee shall have no right to perform any service or offer for sale any goods or services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Lease.
- 2.2.2 Lessee shall neither use nor occupy the Premises or any part thereof for any unlawful or hazardous business purposes, nor operate or conduct its business in a manner constituting a public or private nuisance.
- 2.2.3 Lessee shall not offer for sale within the Premises any tobacco or tobacco products, including cigarettes, cigars, smokeless tobacco, and e-cigarettes and associated products, and shall not advertise any such products within the Premises.
- 2.2.4 Lessee shall not sell lottery tickets within the Premises, or otherwise participate in any legal or illegal gambling or gaming.
- 2.2.5 Lessee shall not serve as a marijuana dispensary or offer for sale within the Premises any marijuana products, notwithstanding any authority under the laws of the State of Colorado authorizing the sale of marijuana for medicinal or recreational use.

- 2.3 Terminal Building Space and Equipment. Lessor shall deliver the Premises, specified herein in accordance with **Exhibit A**, and so long as they are in accordance with **Exhibit A**, Lessee shall accept the Premises and fixtures "as is" and "with all faults." Lessor has no obligation to alter or improve the same, except as expressly provided herein. Lessor grants Lessee use of the following space in the Terminal: exclusive use of the space identified in the attached **Exhibit A**, consisting of approximately 2,785 square feet.
- 2.4 No Exclusive Right. Nothing in this Lease shall be construed as granting Lessee any exclusive right to operate a food and beverage and/or retail concession at the Airport or in the Terminal. Lessor retains the right to enter into leases and/or agreements with others for the provision of food, beverage, and retail items or vending services in areas other than those set aside herein for Lessee's operations.
- 2.5 Right of Ingress and Egress. Lessee shall have at all times the full and free right of ingress to and egress from the Premises and facilities referred to herein for Lessee, its employees, customers, guests and other invitees, subject to security requirements and hours of operation of the security screening checkpoint.
- 2.6 Public Address and Paging System. Lessee and others similarly authorized shall have the right to use the public address and paging system in the Terminal for paging, and similar purposes, subject to reasonable policies established by the Executive Director.
- 2.7 Limitation on Uses. Lessee's uses of the Airport authorized and granted in this Lease shall be limited to providing services at the Airport expressly described herein, including a restaurant and retail goods sales concession, and activities reasonably necessary and related thereto.

### III. OBLIGATIONS OF LESSEE

#### 3.1 Financial Obligations.

- 3.1.1 In consideration of its operating rights hereunder, Lessee shall pay Lessor the greater of Percentage Rent, calculated as a percentage of Gross Revenue received by Lessee, or a Minimum Annual Guarantee (such payment to be referred to herein as the "Concession Fee").
- 3.1.2 The Minimum Annual Guarantee (or "MAG") shall be one hundred and twenty thousand dollars (\$120,000.00) for the first Contract Year. Thereafter, the MAG shall be the greater of (i) eighty five percent (85%) of total Rent for

the prior Contract Year, or (ii) one hundred and twenty thousand dollars (\$120,000.00).

3.1.2.1 Should the average number of revenue passengers enplaning at the Airport during a Contract Year be less than seventy five percent (75%) of the average number of revenue passengers enplaning at the Airport in the previous Contract Year, Lessee's obligation to pay Lessor the MAG for the Contract Year affected shall be void, and in such case Lessee shall pay the Lessor the Percentage Rent of Gross Revenues in place of MAG for the Contract Year affected. Enplaning passenger numbers shall be determined as reported to the Lessor by the air service carriers, and recorded by the Lessor on landing fee reports.

3.1.2.2 If, due to construction activities in the Terminal, Lessee is unable to conduct full operation of its concession, the Parties shall engage in discussions regarding the potential impacts of such construction activities on Lessee's operations, and, in response to the same, the Executive Director may, in her sole discretion, grant Lessee relief from the MAG set forth herein.

3.1.3 As used herein, the term "Percentage Rent" means:

Gross sales up to \$1,000,000.00:

Food, beverage and retail – 10%

Liquor – 12%

Gross sales between \$1,000,000.01 and \$1,200,000.00:

Food, beverage and retail – 12%

Liquor – 14%

Gross sales between \$1,200,000.01 and above:

Food, beverage and retail – 14%

Liquor – 16%

3.1.4 Lessee shall pay Lessor Percentage Rent by the fifteenth (15<sup>th</sup>) day of each month. With each Percentage Rent payment, Lessee shall provide the Executive Director with an itemized statement showing the amount of Gross Revenues, as defined herein, Lessee enjoyed during the preceding calendar month.

3.1.5 Within forty-five (45) days following the close of each Contract Year, Lessee shall pay to Lessor, the difference between its Minimum Annual Guarantee for the year then ending, and the Percentage Rent, if the Percentage Rent is

less than the Minimum Annual Guarantee for said annual period.

- 3.1.6 Lessor reserves the right to meter utilities and charge tenant; however, utilities for the Premises, including electricity and HVAC, are not currently separately metered and shall be provided by the Lessor. Lessee shall arrange for and pay the cost of installation and usage of telephone service, and any other utilities Lessee desires, other than electricity and HVAC, subject to the language of this provision.
- 3.1.7 If Lessor has paid any sum or has incurred any obligation which Lessee had agreed to pay or reimburse Lessor for, or if Lessor is required or elects to pay sum(s) or ensure obligation(s) or expense(s) by reason of the failure, neglect or refusal of Lessee to perform any of the conditions or agreements contained in the Lease, or as a result of an act or omission of Lessee contrary to said conditions and agreements, Lessee shall pay Lessor the sum(s) so paid or the expense(s) so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of the fees and charges thereafter due hereunder.

### 3.2 Terms and Conditions of Payment.

- 3.2.1 All payments should be made in a manner prescribed by Lessor.
- 3.2.2 Lessee covenants and agrees that all sums Lessee is to pay to Lessor as the Concession Fee or other charges under this Lease, if not paid within thirty (30) days of the date when due, may bear interest from the date when due on the unpaid portion thereof at a rate of fifteen percent (15%) per annum.
- 3.2.3 Lessee shall accurately record each sale on a point of sale register acceptable to the Executive Director. Such register shall have a counter visible to the purchaser. Such register shall be non-resettable and sufficient to supply an accurate record of all sales, on tape or otherwise, as directed by the Executive Director. Lessee shall not make any changes in its cash handling and sales recording systems and equipment without prior written approval from the Executive Director.
- 3.2.4 Lessee shall, during the Term, keep on the Premises or at a location made known to Lessor by Lessee in Mesa County, Colorado, for a period of thirty (30) consecutive months following the end of each month during the Term, complete and accurate records of all original sales records and sales slips or sales checks, cash register tapes and other pertinent original sales records, which may be examined upon request by the Executive Director.

3.2.5 Lessor reserves the right to conduct audits of Lessee's books of account and records, which audits may be conducted only upon thirty (30) day's notice to Lessee during normal weekday business hours. In performing said audits, Lessor shall be entitled to review, and Lessee shall be obligated to provide to Lessor, all of the books of account and records that Lessee is obligated to maintain pursuant to subparagraph 3.2.2, above, as well as such other documents and files in Lessee's possession, custody or control at the time Lessor advises concessionaire of its desire to audit Lessee's records, that Lessor, or its auditor, believe, in their sole discretion, relevant or necessary to determine the correct amount of Gross Revenues enjoyed by Lessee, and the correct amount of Percentage Fee owed by Lessee to Lessor, for the Contract Year in question. Should Lessee fail to maintain the books of account and records required to be maintained pursuant to subparagraph 3.2.2, above, or should Lessee fail to permit Lessor or its auditor to review Lessee's books and records, and other documents and files, as required by this subparagraph, said default shall be deemed a material breach of this Lease.

3.2.5.1 If any audit shows percentage rentals and other charges that should have been paid to Lessor by the Lessee pursuant to this Lease were understated or underpaid for the concession period involved, Lessee shall, within thirty (30) days' notice of any such deficiency, pay to Lessor the full amount underpaid, plus one and one-half percent (1.5%) interest per month on said underpayment from the time said underpayment should have been paid to the time said underpayment is fully paid. In addition, if the amount of underpayment is in excess of five percent (5%) of Gross Revenues, Lessee shall bear the cost of such audit.

### 3.3 Performance and Operational Standards.

3.3.1 First-Class Concession. Lessee shall furnish goods and services to Airport passengers, employees and users in a first-class manner, consistent with the highest quality delivery of goods and services in like settings. Lessee shall offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Lessee and Lessor. Lessee shall offer quality products and shall equip, organize, put into service and manage the Premises so as to provide service within an attractive and pleasant atmosphere. Lessee shall operate and maintain the Premises in satisfaction of all public health and safety standards and maintain the highest standards of food safety and cleanliness.

### 3.3.2 Hours of Operation.

3.3.2.1 Lessee shall operate the Concession(s) three hundred and sixty-five (365) days a year, at all times reasonably necessary to serve the public, which in the absence of Lessor's agreement in writing to the contrary shall be, on each calendar day during the Term.

3.3.2.2 The minimum hours of staffed operation for serving the public shall be as set forth in **Exhibit B**, "Hours of Operation".

3.3.2.3 Lessee may not permanently change the hours of operation without written application to and the written approval of the Executive Director. The Executive Director may reasonably require Lessee to change its hours of operation to reflect changing operational circumstances at the Airport provided that Lessee is given ten (10) days advance written notice. On a regular basis, but not less than quarterly, Lessee shall report the planned hours of operation for each Concession location to the Executive Director.

3.3.2.4 In the event that (i) scheduled flights are delayed past the normal last scheduled departures due to weather or other causes, or (ii) Lessor has been notified of incoming diversions, Lessee agrees to reasonably accommodate the needs of the public and employees until such time that the delayed or diverted flights have departed or have been canceled.

### 3.4 Pricing.

3.4.1 Lessee shall ensure that the prices charged for products and services are comparable to prices for such products and services at other Airports of similar size and passenger demographics. The Executive Director reserves the right to impose commercially reasonable limitations on pricing upon discussion and agreement with Lessee on the terms of the same.

3.4.2 Lessee shall offer a discount on all merchandise, food and beverages of no less than ten percent (10%) for all Airport employees, including all holders of an Airport-issued security badge, and any construction contractors and tradesmen working within the Terminal.

### 3.5 Management.

3.5.1 Lessee shall select and appoint, a principal, partner or officer who shall serve as manager of Lessee's operations at the Airport. Such person must be

vested with full power and authority to accept service of all notices provided for herein, including those regarding the quality of restaurant and retail goods, and the appearance, conduct and demeanor of Lessee's agents and employees. The manager shall ordinarily be available during regular business hours and shall inform the Executive Director of current telephone/fax numbers of the local office. A responsible subordinate shall be in charge and available at all times during the manager's absence.

- 3.5.2 Lessee's local manager shall be responsible to monitor and supervise the Premises each day to ensure that the Premises are operated and maintained in a safe and secure manner and kept clean and clear of any safety hazards or unsightly spills and debris and the accumulation of products on the floor prior to restocking.
- 3.5.3 Lessee shall be responsible for notifying the Executive Director of any problem which reduces service levels or sales or in any way impairs Lessee's operation. Lessor will undertake, in its sole discretion, reasonable efforts to assist in eliminating such problems.

### 3.6 Personnel

- 3.6.1 Lessee shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms, and all of its employees to wear badges indicating company trade name and employee's first name. Lessee shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of the concession. Lessee agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Lessee shall prohibit and restrain its employees, vendors, and agents from loud, noisy, boisterous or otherwise objectionable behavior. Upon notice from the Executive Director concerning the conduct or appearance of any such persons, Lessee shall immediately take all steps necessary to remove the cause of the objection.
- 3.6.2 Lessee shall be responsible to train and supervise its employees in the proper handling of food items and compliance with all applicable public health and safety codes and standards.
- 3.6.3 Lessee agrees to provide staff in reasonable numbers adequate to provide a high level of service and maximize sales but commercially reasonable when considering, among other things, the number of expected customers.

3.6.4 Lessee assumes responsibility to recover any Airport-issued security badge or similar credential and any keys for Airport doors or locks from personnel that no longer are employed by Lessee. Lessee shall take all reasonable efforts to recover credentials and keys from any such employee immediately upon termination or separation.

3.7 Maintenance of Premises. Except as expressly provided to the contrary herein, Lessee shall be responsible for cleaning and maintaining the Premises and its equipment, including but not necessarily limited to the following:

3.7.1 Operating and maintaining the Premises, including its floors, and the furniture, fixtures, and equipment installed therein and thereon, all in good order, condition and repair, in clean condition and appearance at all times.

3.7.1.1 With respect to furniture owned by Lessee but located outside the Premises (for example, tables, chairs, and other forms of seating, etc.), Lessee shall be responsible for the bussing, sanitizing, and general cleaning and maintenance of such furniture. Lessor shall maintain responsibility for cleaning and maintaining the floors upon which such furniture is located.

3.7.2 Establishing an adequate preventative maintenance program for the Premises which shall be subject to periodic review by the Executive Director. The program shall include, without limitation, the cleaning of inside windows, doors inside and outside, and the cleaning and repair of all floors, interior walls, ceilings, lighting, decor and equipment located on the Premises, and the routine maintenance of all such equipment. Regardless of Lessee's compliance with its preventive maintenance program, Lessee shall clean such surfaces and equipment on the Premises immediately upon being instructed to do so by the Executive Director or by other governmental entities or agencies having authority.

3.7.3 Lessee will be responsible for services including but not necessarily limited to the following: cable television, pest control, plumbing/drain maintenance, grease traps, hood vents, kitchen appliances and equipment, telephone, internet, specialty lighting, the relocation of fountain drink CO2 machines, and security badges.

3.7.4 Lessee will be responsible for any and all maintenance of all drains located on the Premises in accordance with any and all applicable codes, rules, or regulations, including, but not limited to, any and all applicable health codes, rules, or regulations.

3.7.5 On an annual basis, Lessee shall provide Lessor with copies of any (i) health department inspections, (ii) records for professional cleaning services provided, and (iii) other safety inspections.

### 3.8 Improvements to the Premises

#### 3.8.1 Required Capital Investment.

3.8.1.1 Minimum Capital Investment. No later than thirty (30) calendar days after the Effective Date, Lessee shall provide Lessor with a Minimum Capital Investment plan to include: (i) a detailed break-down of all capital expenditures allocated to the Premises, (ii) a detailed break-down of all projects to be performed on the Premises, and (iii) a reasonably detailed construction schedule. The Minimum Capital Investment plan shall be approved by the Executive Director in their sole discretion.

3.8.1.1.1 All design, construction, rehabilitation, remodeling, and equipment installation associated with the Minimum Capital Investment (collectively the "Construction") shall be completed no later than within seven (7) months of the Effective Date (the "Completion Date"). The Executive Director, by written notice to Lessee and in the Executive Director's sole discretion, may extend the Completion Date for demonstration of good cause by Lessee.

3.8.1.2 Midterm Refurbishment. During the fifth (5<sup>th</sup>) year of operations and prior to any renewal term, Lessee shall undertake a refurbishment of the Concession(s). Such refurbishment may include, but shall not be limited to, refinishing, repairs, replacement, redecorating, repainting, and recarpeting, if applicable, to keep the Concession(s) in first-class condition. The scope of such refurbishment is subject to prior written approval by the Executive Director.

3.8.2 Lessee shall provide construction plans, specifications, budgets and schedules for any and all proposed improvements on the Premises. Such plans and specifications shall be subject to the Executive Director's approval. The Executive Director may reject submissions which are not in accordance with applicable codes, rules, regulations, ordinances and statutes, and which, in its judgment, are inadequate or incompatible with Airport conditions or inconsistent with Airport architectural style and design or with uses not typically made of public use airports.

- 3.8.2.1 Lessor shall be permitted to attend meetings between Lessee and its contractors regarding improvements on the Premises. Further, Lessor shall be provided with a copy of all requests for information from contractors.
- 3.8.3 Upon conclusion of any improvements, Lessee shall submit (i) two (2) complete sets of as-built drawings containing a desperate stamp from Lessee's architect/engineer and attested to by Lessee's architect/engineer that such submitted drawings constitute true and accurate representations of the as-built condition of the improvements, and (ii) one (1) complete set in Computer Aided Design ("CAD") format which complies with the Lessor's then-current CAD standards.
- 3.8.3.1 These drawings must include any applicable governmental approval or permit numbers, the capital improvements as constructed or installed by Lessee on or in the Premises, and shall include the location and details of installation of all equipment, utility lines, and heating, ventilating, and air-conditioning ducts and related matters.
- 3.8.3.2 Lessee shall keep said drawings current by updating the same to reflect any changes or modifications which may be made in or to the Premises and then submitting such updated drawings to Lessor.
- 3.8.4 Lessee shall engage licensed and qualified contractors to complete any improvements on the Premises, and shall be responsible for obtaining all permits and licenses required for construction of such improvements.
- 3.8.5 Any and all improvements permanently placed or constructed on the Premises by Lessee shall, upon termination or sooner expiration of this Lease, be considered part of the Terminal and shall become the sole property of Lessor.
- 3.8.6 Lessee agrees not to permit any mechanics' or materialmen's or any other lien to be recorded against the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.
- 3.8.7 In the event any damage or destruction is caused by an act or omission by Lessee, its subleases, agents or employees, by its improvement, remodel, repair, or construction of the Premises, Lessee shall reimburse Lessor for its actual costs incurred in repairing the Premises or any other property of Lessor.

3.9 Insurance.

3.9.1 Lessee shall carry the following minimum insurance coverages:

3.9.1.1 Commercial General Liability Insurance in the minimum amount of Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage per occurrence. Coverage shall include contractual, broad form property damage, products, personal injury, and completed operations and contractors protective endorsements.

3.9.1.2 Automobile Liability Insurance, Comprehensive Form, in the minimum amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per occurrence for operation of motor vehicles on the Leased Premises. Coverage shall include all owned, non-owned and hired automobiles

3.9.1.3 Liquor liability insurance in an amount of not less than One Million Dollars (\$1,000,000) combined single limit.

3.9.1.4 Workers' Compensation and Employer's Liability Insurance, if applicable, in accordance with the provisions of Colorado law. The limit of such insurance coverage shall be in the amount required by state statute or the Workers' Compensation Act of Colorado. Workers' Compensation Insurance shall include occupational disease provisions covering any obligations of Lessee in accord with the provisions of the Workers' Compensation Act of Colorado. Employer's Liability Insurance shall be held in an amount not less than One Million Dollars (\$1,000,000) for each accident or occurrence of bodily injury by accident or disease. If Lessee sublets any service under the contract, Lessee shall require the subcontractor to provide the same coverage for the subcontractor and the subcontractor's employees.

3.9.1.5 Builder's Risk. During any period of construction or restoration, Builder's Risk Insurance (including fire and other perils within the scope of a policy known as "Causes of Loss – Special Form" or "All Risk" policy) in an amount not less than the total cost of the construction.

3.9.2 If at any time during the term of this Lease, Lessee shall fail to obtain and maintain insurance required in subparagraph 3.9.1, Lessor may affect such insurance by taking out policies in companies satisfactory to Lessor. The amount of the premium or premiums paid for such insurance by Lessor shall

be immediately payable by Lessee to Lessor as additional rent upon receipt of notice that such premiums have been paid.

- 3.9.3 The Grand Junction Regional Airport Authority and the Grand Junction Regional Airport shall be named as an additional insured under each such policy or policies of insurance required under this Lease, except for Workers' Compensation and Employer's Liability Insurance, and said policy or policies shall include the separation of insured's condition.

3.10 Indemnification of Lessor. Lessee agrees to defend, indemnify and hold Lessor harmless, which includes defending, indemnifying, and holding harmless Lessor's Board members, officers, agents, assigns, and employees, from and against any and all liabilities, obligations, claims, damages, costs, and expenses, including attorneys' fees, incurred by or asserted against Lessor, its Board members, officers, agents, assigns, and employees by any person or entity whatsoever, resulting from the acts, omissions or conduct of Lessee or its members, managers, officers, employees, agents, contractors, subcontractors, subtenants, assigns, guests, invitees, or any third party acting under its direction or control.

3.11 Lessee's Other Obligations. Lessee hereby covenants and agrees, that with respect to operations authorized under this Lease:

- 3.11.1 it will charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided further, that Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar price reductions to volume purchasers;
- 3.11.2 it will provide and install sufficient additional fixtures, furniture and equipment, if necessary to meet reasonably anticipated public demand for services offered;
- 3.11.3 it will obtain and maintain all necessary certificates, permits and licenses required for its operations hereunder;
- 3.11.4 it will display only advertising matter relating to the authorized business of Lessee at the Airport which is in good taste and which complies with the standards of Lessor and will obtain the prior approval of the Executive Director of all advertising material, including the use of brand name products on its packaging;
- 3.11.5 it will meet all expenses in connection with the use of the Premises and the rights and privileges herein granted, including without limitation, taxes,

permit fees, license fees and assessments lawfully levied or assessed upon the Premises or structures and improvements situated thereon, and that it will secure all such permits and licenses;

3.11.6 it will not interfere with free access and passage in the Terminal generally; will not interfere with effectiveness of heating or ventilating systems; will not install unauthorized locks on any door or window, a key to which has not been provided to the Executive Director; will not permit loitering or sleeping on the Premises; nor do any act which would invalidate, suspend or increase the rate of fire, property or liability insurance required by this Lease or carried by Lessor; and

3.11.7 it will operate at the Airport only under a name or names approved by Lessor from time to time.

3.12 New Government Regulation. In the event Lessor is required to make additional direct expenditures in connection with the implementation of any future federal regulation imposed upon Lessor as a result of Lessee's operation during the term of this Lease, Lessor may call a conference for the purpose of discussing and determining methods of compliance and recovery from Lessee and other affected lessees of costs so incurred, and Lessee agrees to attend and negotiate in good faith regarding its participation in recovery of such costs.

3.13 Security Requirements.

3.13.1 Lessee shall provide approved escort for vendor employees, contractors and delivery personnel requiring access to the sterile area of the Terminal.

3.13.2 Lessee shall make all necessary future improvements to Lessee's Premises to ensure adequate security, and separation from areas where security measures are carried out under the Lessor's Airport Security Program (the "ASP"), any other Tenant Security Programs, and any exclusive areas in which an airline has assumed responsibility for specified security measures by amendment to the ASP.

3.13.3 Lessee shall comply with any applicable provisions of the Lessor's ASP, Security Directives issued by the TSA, and any applicable rules and regulations which may be promulgated by the TSA from time to time, which have been provided to Lessee ("Security Requirements" hereinafter). The Lessor shall provide Lessee with amended or updated Security Requirements when promulgated, and Lessee shall acknowledge receipt pursuant to paragraph 3.13.7 below. Lessee shall submit to inspections by the TSA, the

Lessor, Airport Management, and/or their security screening contractor, to ensure compliance, with Security Requirements.

- 3.13.4 Any violation of conformance with Security Requirements will be documented in writing and a copy of the violation notice provided to the Lessee's Manager in writing. Lessee will investigate the violation and provide a written response and/or corrective action within twenty-four (24) hours. A copy of the response will be provided to the Lessor.
- 3.13.5 To the extent that any action or omission by Lessee, its officers or employees, to follow Security Requirements results in the Lessor being fined, including any type of monetary assessment or penalty (collectively, a "Fine"), by the TSA or any other governmental entity having jurisdiction, Lessee shall promptly reimburse the Lessor for any such Fine, together with the reasonable costs incurred by the Lessor in defending against the proceeding or actions which has resulted in the Fine, including any attorney fees expended by Lessor. The Lessor shall notify Lessee if any such Fine has been proposed, and give Lessee the opportunity to join in the defense of any such proceeding. Lessee shall promptly pay any Fine levied directly against Lessee by TSA or any other governmental entity having jurisdiction, as soon as any protest or appeal process have run or the time for taking them has expired.
- 3.13.6 Lessee acknowledges that all products delivered and transported to the sterile portion of the Terminal, are subject to inspection by Security Screeners, regardless of by whom they are employed. All Lessee employees, officers and escorted visitors in the sterile area of the Terminal are subject to search, and may be required to provide appropriate credentials.
- 3.13.7 Lessee acknowledges that all Security Requirements which are shown or provided to it under paragraph 3.13.3 above, are sensitive security information ("SSI") in accordance with 49 CFR Parts 15 and 1520, that Lessee and any involved persons are required to protect the same from unauthorized disclosure, and that civil penalties may be imposed for failure to do so. The Lessee's general manager (the "Manager") is the designated primary point of contact for receiving any SSI which Lessee receives. The Manager will acknowledge receipt of SSI to the Lessor, and confirm any actions taken by Lessee as required by the SSI. All SSI materials shall be stored in secured areas, or locked in secured cabinets, within the Lessee's Premises at the Airport. Materials marked as containing SSI shall be disposed of by shredding.

3.14 Performance Deposit.

3.14.1 Lessee must post with Lessor, and Lessor must thereafter continuously maintain for the entire concession Term, a Performance Deposit in an amount equal to ten thousand dollars (\$10,000.00) to cover Lessee's performance of all of its obligations under this Lease for the entire concession term. As used in this paragraph, the term Performance Deposit shall mean a performance bond, irrevocable letter of credit, or cash deposit. Lessee shall be responsible for paying all required fees, premiums or other costs associated with obtaining and maintaining the Performance Deposit. In the event Lessee defaults in any of its monetary obligations to the Lessor, the Lessor shall be entitled to collect any and all damages or costs it incurs from the Performance Deposit provided, and if any deficiency remains, Lessor may initiate legal proceedings to recover any remaining damages from Lessee. The Performance Deposit will be returned, less any default payments, to Lessee at the expiration of the Lease.

#### IV. OBLIGATIONS OF LESSOR

4.1 Quiet Enjoyment. Lessor covenants that on paying the rent and performing the covenants herein contained, Lessee shall peacefully and quietly have, hold and enjoy the rights granted herein for the agreed term.

4.2 Maintenance and Utilities.

4.2.1 Except as provided in Section 3.7 above, during the term of this Lease, Lessor shall maintain and keep in good repair so much of the Terminal Building, not identified in paragraph 2.3 above, as is not under the exclusive control of individual lessees, in accordance with applicable laws, rules and regulations.

4.2.2 Subject to the terms, conditions, and language of Section 3.7, above, the Lessor shall provide electricity and HVAC to the Premises, so long as Lessee uses no more than is customary for the type of business operated.

#### V. TERM

5.1 Term. Subject to earlier termination as hereinafter provided, the primary term of this Lease shall be for ten (10) years, commencing on the date first set forth above (the "Effective Date") and ending on the tenth anniversary thereof, with an option to extend the term of the Lease by one (1) additional five (5) year term at the sole discretion of the Lessor.

5.2 Holding Over. Lessor may permit Lessee to hold over beyond the expiration of this Lease in order for Lessor to conclude a solicitation process or to prepare for

a follow-on concession tenancy either with Lessee or another business or businesses selected by Lessor. Lessor will notify Lessee in writing of Lessor's offer of a holdover tenancy. Within thirty (30) days of receipt of Lessor's notice, Lessee shall notify Lessor in writing as to Lessee's acceptance of said holdover tenancy. If Lessee fails to so notify Lessor in writing within said thirty-day period, Lessee shall be deemed to have rejected Lessor's offer of holdover tenancy.

5.2.1 If Lessor permits Lessee to holdover, such a holding over shall not be deemed a renewal or extension of this Lease but shall create a month-to-month tenancy on the same terms and conditions of this Lease in effect immediately prior to the commencement of the holding over. Lessor may terminate the holdover upon thirty (30) days' written notice to Lessee. Other than as specified in this section, Lessee may not otherwise remain on the Premises for any reason beyond expiration of the Term.

5.3 Terminal Remodel and Reconfiguration. The parties acknowledge that Lessor operates the Airport to serve the public interest. In the event Lessor determines that the public interest requires modification of the Terminal, to eliminate all or a substantial part of the Premises, or constructs a substitute Terminal building during the term of this Lease, then:

5.3.1 To the extent reasonably requested by the Lessor, Lessee agrees to consult and cooperate in the design of substitute Premises in such a remodeled Terminal; and

5.3.2 At the Lessor's option, and providing that any substitute Premises in a remodeled Terminal building are not less in square footage than the current Premises, this Lease shall apply to such substitute Premises, and Lessee agrees to conduct its operations therein pursuant to this Lease.

## VI. TERMINATION, SURRENDER AND DAMAGES

6.1 Termination by Lessee. Lessee shall have the right, upon written notice to Lessor, to terminate the Lease upon the happening of one or more of the following events if said event or events shall then be continuing:

6.1.1 The issuance by any court of competent jurisdiction of any injunction, order or decree which remains in force for a period of at least ninety (90) days, preventing or restraining the use by Lessee of all or any substantial part of the Premises, or preventing or restraining the use of the Airport for normal airport purposes or the use of any part thereof which may be used by Lessee and which is necessary for Lessee's operations on the Airport.

- 6.1.2 If Lessor shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it under this Lease and shall fail to cure said default within thirty (30) days following receipt of written demand from Lessee to do so.
- 6.1.3 If all or a material part of the Airport or Airport facilities shall be destroyed by fire, explosion, earthquake, other casualty, or acts of God or a public enemy.
- 6.1.4 If the United States Government or any of its agencies shall occupy the Airport or any substantial part thereof to such an extent as to interfere materially with Lessee's operation for a period of thirty (30) consecutive days or more.

6.2 Termination by Lessor. Lessor need not terminate this Lease upon default but, at its discretion and without terminating the Lease, may seek specific performance or damages incurred as a result of Lessee's default. However, Lessor shall also have the right to terminate this Lease in the event of any of the following acts of default:

- 6.2.1 Failure by Lessee to make any payment due hereunder within thirty (30) calendar days after notice of the overdue payment is sent to Lessee, in which case, Lessor may, at its option, in addition to other remedies and with or without terminating this Lease, take possession of so much of Lessee's personal property as is reasonably necessary to secure payments of the amounts due and unpaid.
- 6.2.2 Failure by Lessee to conduct business at the Airport for a period of five (5) consecutive days without reasonable cause including, but not limited to strikes, work stoppage and equipment failures.
- 6.2.3 Default in the performance of any covenant or agreement in this Lease required to be performed by Lessee, other than the payment of money or the occurrence of the events described in this paragraph, and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from Lessor of written notice to remedy the same.
- 6.2.4 Failure to maintain adequate records and accounts reflecting its business and gross receipts.
- 6.2.5 An act occurs which results in the suspension or revocation of any right, power, license, permit or authority necessary for the conduct and operation of the business authorized herein for a period of more than fifteen (15) days.

- 6.2.6 The interest of Lessee under this Lease is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of Lessor.
  - 6.2.7 Lessee becomes, without the prior written approval of Lessor, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution.
  - 6.2.8 An attachment or execution is levied, a receiver is appointed, or any other process of any court of competent jurisdiction is executed, which is not vacated, dismissed or set aside within a period of thirty (30) days, and which does, or as a direct consequence of such process will, interfere with Lessee's use of the Premises or with its operations under this Lease.
  - 6.2.9 Lessee becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the Premises.
  - 6.2.10 Service ceases or deteriorates for any period which, in the opinion of Lessor, materially and adversely affects the operation of service required to be performed by Lessee under this Lease, including events described in the paragraph above.
  - 6.2.11 Any lien is filed against the Premises because of any act or omission of Lessee and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days.
  - 6.2.12 Lessee voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized, including by acts described in the paragraph above. Upon any such default, Lessor shall have any and all remedies available to it in law or equity, which remedies are cumulative and may be exercised by Lessor in any order.
- 6.3 Surrender of Possession. Lessee shall, on the expiration date of the Term, or upon the earlier termination hereof, peaceably surrender possession of the Premises, free and clear of all liens and encumbrances, other than those, if any,

permitted under this Lease or otherwise created or consented to by Lessor. No more than thirty (30) days after the expiration of the Term, Lessee shall remove any and all of Lessee's tangible movable personal property, except those specifically identified by Lessor to be retained, and will return the Premises in "broom clean" condition, capable to be relet by Lessor without significant repair, excepting only reasonable wear and tear. All such costs of removal and restoration shall be borne by Lessee, without contribution by Lessor.

6.4 Force Majeure. Neither the Lessor nor Lessee shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of aircraft or fuel or tires as the direct result of governmental decree, acts of God, acts of the public enemy, acts of superior governmental authority, weather condition, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which is not under its control.

6.5 Damage or Destruction of Premises.

- 6.5.1 In the event the Premises are substantially destroyed for any reason, this Lease shall terminate without further liability to Lessor, other than refund of any prepaid rent, unless Lessor elects, within thirty (30) days thereof, to restore or rebuild the Premises, in which case this Lease will be suspended for a period of up to one-hundred eighty (180) days while the Premises are being restored.
- 6.5.2 In the event that the Terminal is damaged or remodeled in such a manner that the restaurant and/or retail service area must be temporarily removed, Lessee may, subject to Lessor approval, relocate the restaurant and/or retail service area or may remove the same temporarily during such repair or remodeling.
- 6.5.3 Notwithstanding any of the foregoing, in the event any damage or destruction is caused by an act or omission by Lessee, its subleases, agents or employees, Lessee shall reimburse Lessor for its actual costs incurred in repairing the Premises. Nothing in this Lease shall be construed as a waiver of the right of Lessor to recover any and all damages from Lessee arising out of the fault or negligence of Lessee.

## VII. ASSIGNMENT AND SUBLETTING

- 7.1 Assignment and Subletting. Lessee shall not at any time assign or sublet their rights under this Lease or any part thereof without the written consent of Lessor. No such assignment or subletting shall release Lessee from its obligations to pay any and all of the rentals and charges and to otherwise perform Lessee's obligations under this Lease.
- 7.2 Successors to Lessor. The rights and obligations of Lessor under this Lease may be assigned by Lessor, at the option of Lessor, without the necessity for the concurrence of the Lessee in any such assignment.

## VIII. COMPLIANCE WITH OTHER AGREEMENTS, LAWS, AND REGULATIONS

- 8.1 Compliance with Laws and Regulations.
- 8.1.1 Lessee shall comply with statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements (hereinafter collectively referred to as "Laws") of federal, state and local governmental authorities which are applicable to the Premises and the Airport or to any adjoining public ways, or to the manner of use or the condition of the Premises and the Airport or of adjoining public ways; provided that nothing herein contained shall be construed as estopping or preventing Lessee from contesting in good faith the validity or applicability to the operations of Lessee hereunder of any Laws, including without limitation the exhaustion of all appeal rights.
- 8.1.2 Lessee's use of the Airport and the Premises shall be subject to the Airport Rules and Regulations and such other similar rules and directives of the Executive Director, each as may be adopted and amended from time to time.
- 8.1.3 Lessee shall comply with all applicable health, safety and sanitary laws, regulations and inspections concerning its operations. Lessee shall keep applicable licenses and permits displayed on the Premises, as may be required by law.
- 8.1.3.1 Lessee shall keep on file with Lessor a copy of its current liquor license. Lessor reserves the right to impose limitations upon the areas in which liquor may be sold.
- 8.2 Lease Subordinate.

- 8.2.1 Lessor shall be free, in the future, to renegotiate the Lease on such terms and conditions as it deems appropriate and in the public interest, without any consent or approval of Lessee or any other person, and Lessee shall be bound by the terms of such renegotiated agreement.
- 8.2.2 This Lease shall be subordinate to any existing or future agreement between Lessor and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition to the expenditure of federal funds for development of the Airport.
- 8.3 Inspection by Lessor. Lessor and/or the Executive Director, through its authorized employees and agents, shall have the right at all reasonable times to enter upon the Premises to inspect, to observe the performance by Lessee of its obligations hereunder, and to do any act which Lessor may be obligated to do or have the right to do under this Lease, or under any other agreement to which Lessor is a party or under applicable law.
- 8.4 Service Entrances. Lessor shall have no obligation to provide any special service entrances, including those for utilities, other than those which presently exist in the Terminal. In the event Lessee requires any additional or special service entrances, the same shall be installed at the cost and expense of Lessee.
- 8.5 Airport Concession Disadvantaged Business Enterprises.
- 8.5.1 This Lease concerns an airport concession and therefore is subject to the requirements of 49 C.F.R. Part 23 (Participation of Disadvantaged Business Enterprise in Airport Concessions) ("Part 23") and, by reference in Part 23, certain requirements of 49 C.F.R. Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs). This Lease further is subject to the requirements of the Authority's ACDBE Program, as may be adopted and amended by Lessor from time to time.
- 8.5.2 The terms used in this section shall have the meaning set forth in Part 23. For purposes of this Agreement, "ACDBE" shall mean a business that meets the requirements set forth in 49 C.F.R. Section 23.3.
- 8.5.3 Lessee shall make good faith efforts to ensure participation of certified ACDBEs in furtherance of the Authority's ACDBE Program goal.
- 8.5.4 Lessee shall make good faith efforts to replace any ACDBE subtenant, subcontractor, joint venture partner or vendor that is terminated, withdraws,

or otherwise ceases to participate in the concession activity with another ACDBE to participate at the same or similar level. The Parties agree and acknowledge that, to the extent this Lease constitutes a long-term, exclusive agreement pursuant to 49 C.F.R. Section 23.75, Lessee shall comply with requirements of Section 23.75 and the applicable policies of the Federal Aviation Administration in replacing any ACDBE subtenant, subcontractor, joint venture partner or vendor.

8.5.5 Lessee shall provide to Lessor an ACDBE participation report, in a form determined by Lessor, within sixty (60) days of written request therefor by Lessor.

8.5.6 Failure by Lessee to carry out the requirements of this section will constitute a material breach of this Lease and may result in termination.

8.6 Americans with Disabilities Act.

8.6.1 Lessee agrees that it shall develop, manage, use, and occupy the Premises in accordance with the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (hereafter collectively the "ADA"), including, without limitation, modifying the Lessee's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons.

8.6.2 Lessee acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to disabled persons. Lessee shall provide the services specified in this Lease in a manner that complies with the ADA and all other applicable federal, state, or county disability rights legislation. The Lessee agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Lease and further agrees that any violation of this prohibition on the part of the Lessee shall constitute a material breach of this Lease.

8.7 Bankruptcy. Notwithstanding anything herein to the contrary, in the event that a petition for relief under the United States Bankruptcy Code or under any similar or successor federal, state, or local statute is filed by or against the Lessee (a "Filing"):

8.7.1 Lessee shall give the Lessor immediate written notice of the Filing; Lessee will promptly confirm the outstanding amount of any obligations hereunder due the Lessor as of the date of Filing; and Lessee will fully and timely perform all obligations arising hereunder commencing as of the date of the Filing.

- 8.7.2 Thereafter, Lessee will promptly determine whether it intends to assume or reject the unexpired term of this Lease, if any, and shall promptly advise the Lessor of such determination; and Lessee will not seek to delay the date by which it will make the determination under this subparagraph and obtain any necessary third-party authorization (including court approval) therefore beyond the 60<sup>th</sup> day following the date of the Filing without the prior express consent of the Lessor.
- 8.7.3 If Lessee determines that it wishes to assume this Lease, the Lessee will cure all defaults, compensate the Lessor for all damages incurred as a result of such defaults, provide the Lessor with adequate assurances of future performance, and comply with any and all other statutory or legal requirements prior to the effective date of such assumption.
- 8.7.4 If Lessee determines that it wishes to assume this Lease and assign it to a third-party, Lessee will give the Lessor not less than 60 days notice of such intention, provide to the Lessor all pertinent information with respect to the proposed assignee concurrently with the notice, cure all defaults, compensate the Lessor for all damages incurred as a result of such defaults, provide the Lessor with adequate assurances of future performance through the proposed assignee and comply with any and all other statutory or legal requirements prior to the effective date of such assumption and assignment.
- 8.7.5 If Lessee wishes to reject the unexpired term of the Lease, if any, Lessee will not seek to have the effective date of such rejection determined to be a date earlier than the date on which Lessee shall return control and possession of the Preferential Premises to the Lessor in the condition and on the terms set forth herein relevant to the redelivery of possession to the Lessor, and shall fully and timely pay all rent and other charges through the date of such rejection.
- 8.7.6 Lessee shall be deemed to have expressly consented to the modification of the stays of proceedings in any Filing in the event of any post-Filing default by the Lessee under the terms of this Lease for the purpose of allowing the Lessor to exercise any default rights or remedies arising from such default.

**8.8** Reservation of Lessor Rights. Notwithstanding anything herein to the contrary, the Lessor reserves the following rights:

- 8.8.1 For the use and benefit of the public, the right of flight for the passage of aircraft in the air space above the surface of the Premises, together with the

right to cause in that air space such noise as may be inherent in the operation of aircraft utilizing the Airport.

- 8.8.2 During time of war or national emergency, the right to lease the Airport or any part thereof, including the Premises or any part thereof, to the United States Government for military purposes, and, in the event of such lease to the United States for military purposes, the provisions of this Lease shall be suspended insofar as such provisions may be inconsistent with the provisions of the lease to the United States.
- 8.8.3 The right to direct all activities of Lessee at the Airport in the event of an emergency.
- 8.8.4 The right to grant other leases, licenses, permits or rights to occupancy or use of the Airport so long as such other grants do not unreasonably interfere with or impair Lessee's rights hereunder or Lessee's occupancy or use of the Premises, and the right to direct changes in the way Lessee conducts its Airport operations in the event that the Lessor determines, in the exercise of its reasonable judgment, that one or more aspects of Lessee's method of operation is unreasonably interfering with the lawful and proper occupancy or use by others of the Airport. Provided, that this reserved right is not intended to allow the Lessor to deny Lessee the basic right to use the Premises for any of the uses permitted hereunder.
- 8.8.5 The right to further develop and/or improve the Airport as the Lessor deems appropriate, without interference or hindrance by Lessee, and the Lessor shall have no liability hereunder to Lessee by reason of any interruption to its operations on the Premises occasioned by such development and/or improvement of the Airport; provided, that if Lessee shall be unable to conduct reasonably normal business operations on the Premises by reason of any such development and/or improvement of the Airport, then rent and other fees payable by Lessee hereunder shall be subject to an equitable adjustment during the period of such interruption.

## IX. NON-DISCRIMINATION

- 9.1 Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee. This provision obligates Lessee for the period during which

the Premises is used or possessed by Lessee and the Airport remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

9.2 During the performance of this Lease, Lessee for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities:

- 9.2.1 Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 9.2.2 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 9.2.3 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 9.2.4 Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- 9.2.5 The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- 9.2.6 Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 9.2.7 The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 9.2.8 Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation,

and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

9.2.9 The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

9.2.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

9.2.11 Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

9.2.12 Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq.).

9.3 Lessee, including personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee will use the Premises in compliance with all other requirements imposed by or pursuant to the list of non-discrimination acts and authorities, as enumerated in the preceding subsection. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the Lease had never been made or issued.

9.4 During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest, agrees as follows:

- 9.4.1 Nondiscrimination: Lessee, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and Agreements of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 9.4.2 Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Lessee of contractor's obligations under this Lease and the Nondiscrimination Acts and Authorities.
- 9.4.3 Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Lessor or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to Lessor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 9.4.4 Sanctions for Noncompliance: In the event of Lessee's noncompliance with the non-discrimination provisions of this Lease, Lessor will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to, cancelling, terminating, or suspending this Lease, in whole or in part.
- 9.4.5 Incorporation of Provisions: Lessee will include the provisions of this subsection in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Lessee will take action with respect to any subcontract or procurement as Lessor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Lessee may

request Lessor to enter into any litigation to protect the interests of Lessor. In addition, Lessee may request the United States to enter into the litigation to protect the interests of the United States.

X. MISCELLANEOUS PROVISIONS

- 10.1 Headings. The section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision.
- 10.2 Time of Essence. Time is of the essence in this Lease.
- 10.3 Attorneys' Fees. Lessee agree to pay reasonable legal fees or costs incurred by Lessor, to the extent Lessor is a prevailing party in any legal action brought by Lessor to enforce the provisions of this Lease. Lessee shall not be responsible for such fees or costs if a court of competent jurisdiction finds that Lessor's action was brought without substantial merit or in bad faith.
- 10.4 Non-Waiver. Waiver by either party of or the failure of either party to insist upon the strict performance of any provision of this Lease shall not constitute a waiver of the right or prevent any such party from requiring the strict performance of any provision in the future.
- 10.5 Limitation of Benefit. This Lease does not create in or bestow upon any other person or entity not a party to this Lease any right, privilege or benefit unless expressly provided in this Lease. This Lease does not in any way represent, nor should it be deemed to imply, any standard of conduct to which the parties expect to conform their operations in relation to any person or entity not a party.
- 10.6 Severability. Any covenant, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Lease, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice Lessor or Lessee in their rights and obligations contained, in valid covenants, conditions or provisions.
- 10.7 Effect of Lease. All covenants, conditions and provisions in this Lease shall extend to and bind the successors of the parties hereto, the assigns of Lessor and to the permitted assigns of Lessee.

10.8 Notices. Notices and demands provided for herein shall be sufficient if hand delivered, sent by Certified Mail, Return Receipt Requested, postage prepaid, or sent via nationally recognized overnight courier service, as follows:

If to the Lessor:

Grand Junction Regional Airport Authority  
Attention: Executive Director  
2828 Walker Field Drive, Suite 301  
Grand Junction, Colorado 81506

If to the Lessee:

Tailwind GJT, LLC  
Attn: Jeffrey Switzer  
408 Landmark Dr.  
Wilmington, North Carolina 28415

Notices given in accordance with these provisions shall be deemed received when delivered. Either party may change its address to which notices shall be delivered or mailed by giving notice of such change as provided above.

10.9 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Colorado, and any action to enforce or interpret its provisions shall be brought in a court in and for Mesa County, Colorado and/or the Federal District Court for the District of Colorado.

10.10 Entire Agreement. This Lease embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and agreements, whether written or oral. All of Lessee's operations on or from the Airport are subject to this Lease.

10.11 Nature of Relationship. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture, or any association between Lessor and Lessee, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

10.12 Modification of Agreement. This Lease may not be altered, modified or changed in any manner whatsoever except by a writing signed by both parties.

10.13 Taxes & Assessments. Lessee shall timely pay all real and personal property taxes related to its operations hereunder or elsewhere; all local, state and federal income, payroll, and other taxes related to its operations hereunder or elsewhere; all sales and other taxes measured by or related to its sales and service revenues hereunder or elsewhere; all license fees; and any and all other taxes, charges, imposts or levies of any nature, whether general or special, which may at any time be imposed by any local, state or federal authorities having jurisdiction, or that become a lien upon Lessee, Lessor, the Premises, or any improvements thereon, by reason of Lessee's activities under this Lease or elsewhere. Lessee shall have the right, by giving written notice to Lessor of its intention to do so, to resort to any available legal or administrative proceeding to contest or obtain the review of any such tax, charge or assessment at any time before such tax, charge or assessment becomes delinquent. At Lessee's request, Lessor shall assist Lessee in such proceeding. The expense of such proceeding, including all of Lessor's costs and attorney's fees incurred in assisting Lessee in such proceeding, shall be paid by Lessee, regardless of whether Lessor actually attends or participates in the proceeding.

10.14 Certification by Lessee. Lessee certifies, by signing this Lease, that neither it nor its members, managers, or principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency.

**[END OF LEASE; SIGNATURE PAGE AND EXHIBITS FOLLOW]**

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

Tailwind GJT, LLC

\_\_\_\_\_

By: Jeff Switzer  
Chief Operating Officer  
Tailwind GJT, LLC

Grand Junction Regional Airport Authority

\_\_\_\_\_

By: Angela Padalecki  
Executive Director  
Grand Junction Regional Airport Authority

Exhibit A

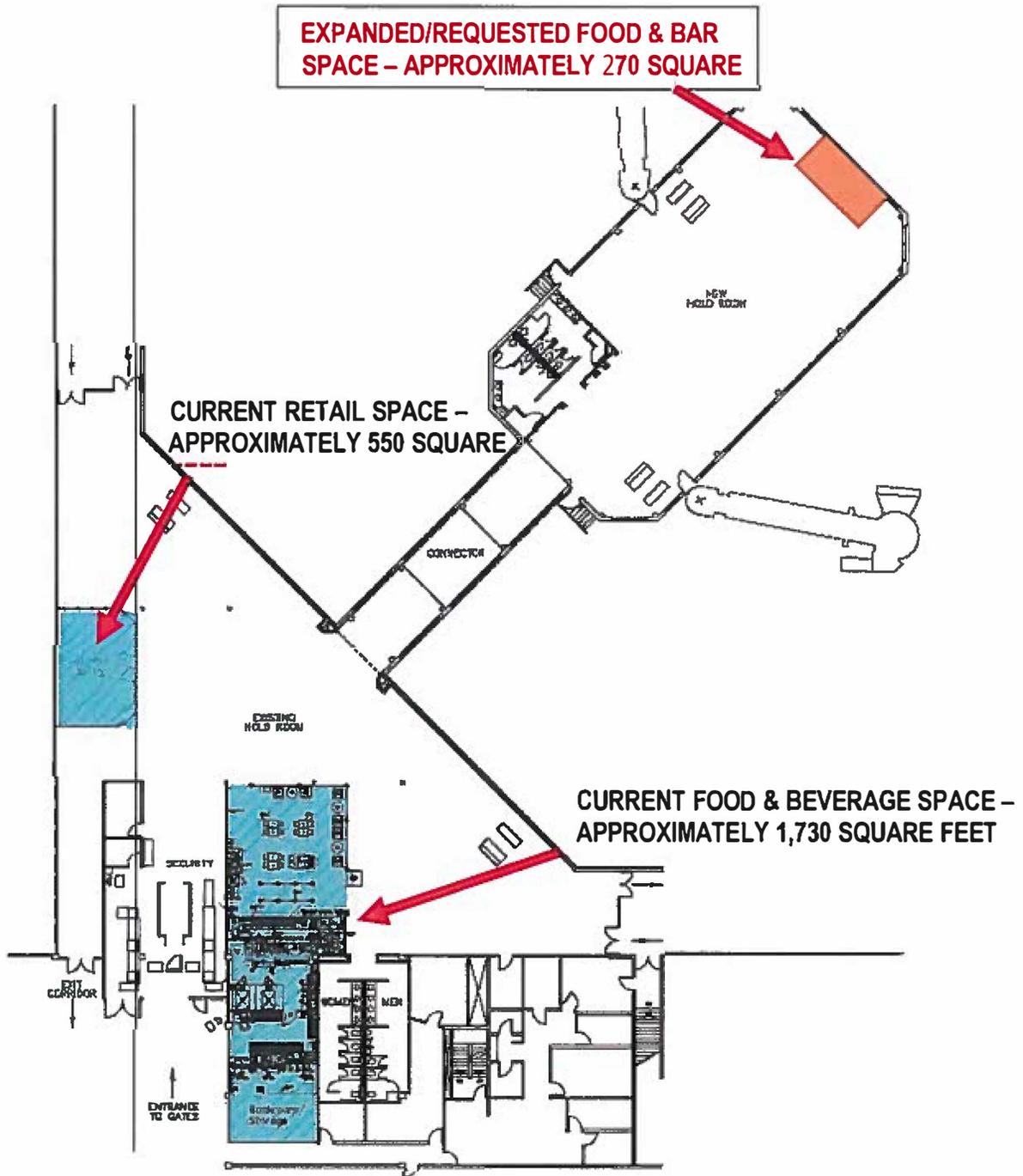


Exhibit A

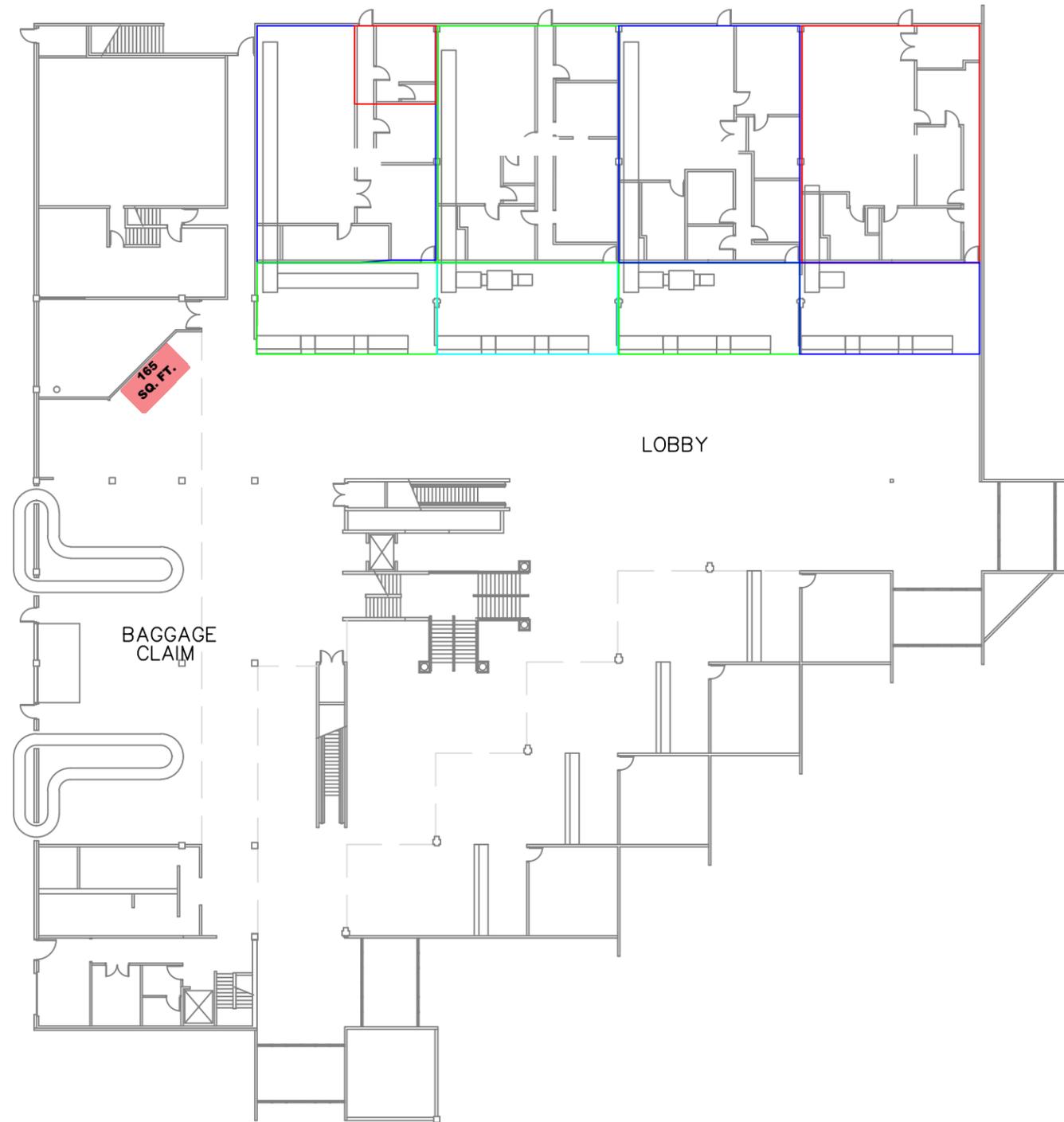
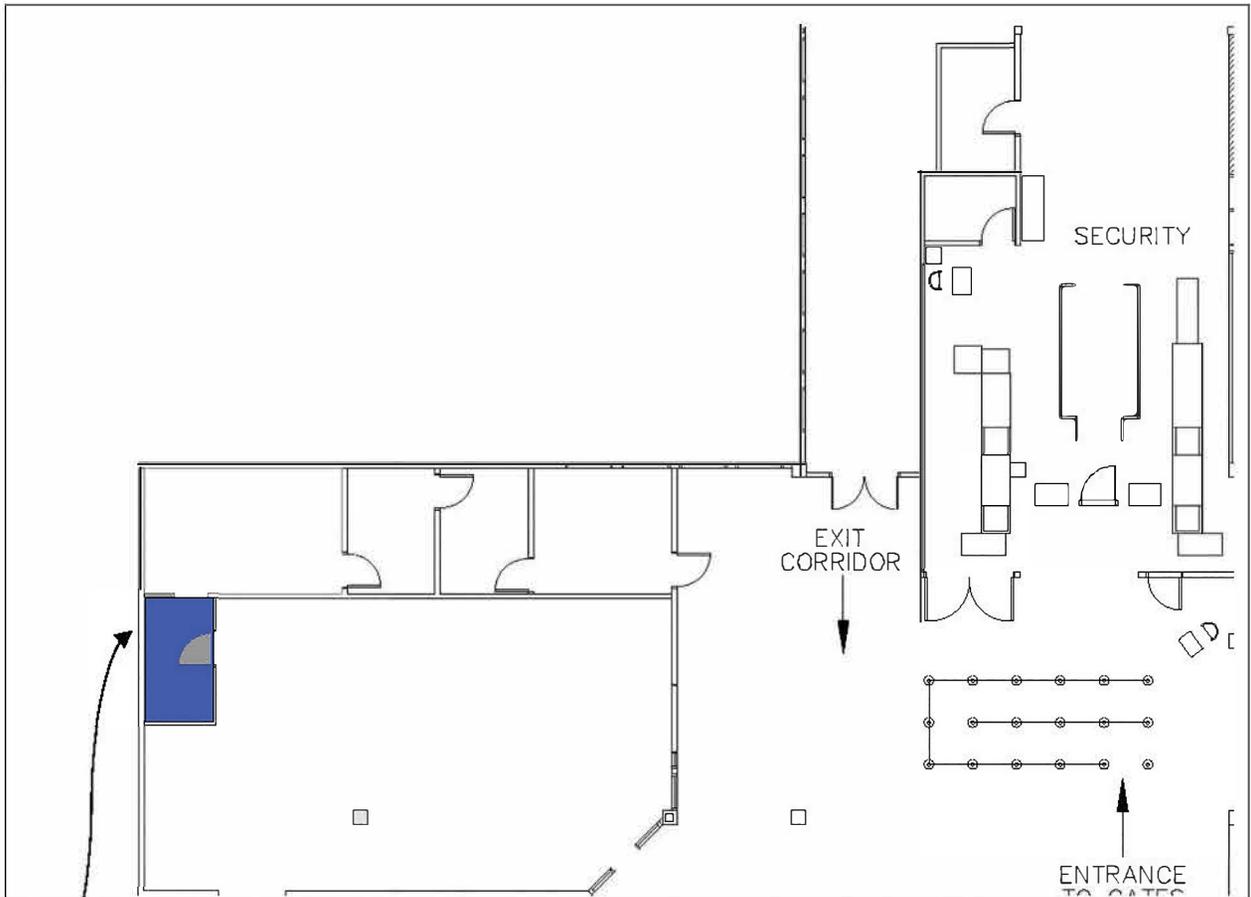


Exhibit A



Storage space –  
approximately 70 square feet

**EXHIBIT B**  
**Hours of Operation**

The specific hours of operation for each Concession location shall be as follows:

Retail Space (**Gift Shop**): One (1) hour before the first scheduled flight departure of the day until the last scheduled flight departure of the day.

Food & Beverage Space (**Restaurant**): One (1) hour before the first scheduled flight departure of the day until the last scheduled flight departure of the day.

Food & Beverage Space (**Pre-Security Coffee Shop**): Eight o'clock in the morning (8am MST) until the last scheduled flight departure of the day.

Food & Beverage Space (**Bar**): Ten o'clock in the morning (10am MST) the last scheduled flight departure of the day.