

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2019-11

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE AIRPORT RESTAURANT, LLC FOR A SUBLEASE AT THE TOM MADSEN AIRPORT TERMINAL

WHEREAS, the City of Unalaska desires to negotiate a sublease at the Tom Madsen Airport with the Airport Restaurant, LLC; and

WHEREAS, the City of Unalaska has reached an agreement with the Airport Restaurant, LLC; and

WHEREAS, the State of Alaska Department of Transportation and Public facilities requires an agreement between the City of Unalaska and the tenants at the Tom Madsen Airport Terminal; and

WHEREAS, the City of Unalaska has negotiated fairly and reached an agreement on rates and terms of a sublease with the Airport Restaurant, LLC.

NOW THEREFORE BE IT RESOLVED that the Unalaska City Council authorizes the City Manager to enter into an agreement with Airport Restaurant, LLC for a sublease at the Tom Madsen Airport Terminal.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on March 12, 2019.



Frank Kelty
Mayor

ATTEST:



Marjie Veeder
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Peggy McLaughlin, Port Director
Through: Thomas Thomas, City Manager
Date: March 12, 2019
Re: Resolution 2019-11, Resolution authorizing the City Manager to enter into an agreement with the Airport Restaurant, LLC for a sublease at the Tom Madsen Airport Terminal

SUMMARY: This resolution authorizes the City Manager to sign a sublease agreement with the Airport Restaurant, LLC. This agreement would provide a base rent, mechanisms for billing utilities, financial documentation requirements, and a term not to exceed December 31, 2021.

PREVIOUS COUNCIL ACTION: No formal action has been taken by the City Council on this sublease since 2012.

BACKGROUND: The Airport Restaurant sublease with the City of Unalaska expired December 31, 2018. Negotiations were on-going with the restaurant prior to the expiration of the sublease. City Council was briefed and the negotiations were completed by the City attorney.

DISCUSSION: By approving this resolution, the City Council authorizes the City Manager to enter into an agreement with the Airport Restaurant and submit the final sublease to the State of Alaska for approval.

Set forth in this agreement are internal controls that meet the criteria for internal audits and financial tracking. The terms of the agreement provide the tenant with opportunities to extend, but the extensions may not go beyond December 31, 2021. The tenant may also terminate the sublease.

The City of Unalaska is required to obtain approval from the State of Alaska Department of Transportation and Public Facilities for any space that it leases at the airport terminal. Providing the opportunity to extend through 2021 gives the City ample time to renew the land lease with the State, which expires in 2023.

City Staff believes that internal controls created within this agreement meet the requirements of the Unalaska City Council and the State of Alaska Department of Transportation and Public Facilities. This agreement has been fairly negotiated; the terms are reasonable and should be approved by the City to be submitted to the State for final approval.

ALTERNATIVES: The City Council could approve Resolution 2019-11 and move it forward to the State for DOT approval.

The City Council could choose to not approve Resolution 2019-11.

The City Council could make recommendations of alternative terms and conditions for the sublease.

FINANCIAL IMPLICATIONS: The rent received from the Airport Restaurant is calculated into the budget for the airport fund.

LEGAL: The agreement was prepared by the city attorney.

STAFF RECOMMENDATION: Staff recommends approving Resolution 2019-11.

PROPOSED MOTION: I move to approve Resolution 2019-11.

CITY MANAGER'S COMMENTS: I recommend adoption of Resolution 2019-11.

ATTACHMENTS: Proposed Agreement

CITY OF UNALASKA

TOM MADSEN AIRPORT TERMINAL

SUBLEASE AGREEMENT

This Sublease Agreement ("Sublease") is made effective this 1st day of February, 2019, by and between the City of Unalaska, a Municipal Corporation ("the City"), and Airport Restaurant, LLC (Tenant"). The parties agree as follows:

1. Premises and Term.

(a) Leased Premises. Subject to the terms and conditions in this agreement the City sublets to Tenant that certain area in the Unalaska Airport Terminal Building ("Building") generally described as Airport Restaurant ("Leased Premises"). The Leased Premises consist of the floor area as outlined on the floor plan (attached hereto as Exhibit "A") of the Building.

(b) Square Footage. For the purpose of calculating Monthly Base Rent and/or Tenant's share of Utility Costs, the agreed square footage of the Leased Premises is 2 358 square feet.

(c) Term. The term of this Sublease shall be from February 1, 2019 through and including December 31, 2021, unless terminated earlier in accordance with this Agreement.

(d) Use of Leased Premises for Security. The Tenant understands that security in the nation's airports is a matter of the utmost importance and that the City has little or no control over how or where security is implemented in the Building. The Tenant agrees to yield any part or all of the Leased Premises for the implementation of security as follows:

(1) Partial Loss of Leased Premises. If part of the Leased Premises is required by the State of Alaska, the Transportation Security Administration or any other state or federal agency the City may change the shape and/or square footage of the Leased Premises. Should more than 25 percent of the Leased Premises be required by the State of Alaska, the Transportation Security Administration, or any other state or federal agency, the Tenant and the City each has the option of terminating this agreement. If the Tenant continues to lease the Leased Premises, then the Base Monthly Rent and Extended Operating Expenses shall be calculated on the actual square footage of the Leased Premises available to the Tenant.

(2) Total Loss of Leased Premises. If all of the Leased Premises is required by the State of Alaska, the Transportation Security Administration, or any other state or federal agency, this lease shall terminate. The City may, but is under no obligation to, offer to transfer the Tenant to other space which may be available within the Building Should different space be offered to Tenant, then the City may require the Tenant to enter into a new sublease.

(3) Notice. The City agrees to give Tenant 30 days' notice that all or part of the Leased Premises is required for security purposes unless the City is given less than 30 days' notice before all or part of the Leased Premises is required by the State of Alaska, the Transportation Security Administration, or any other state or federal agency which case the City shall provide the Tenant with notice within 24 hours after the City receives notice.

(4) Hold Harmless. Tenant understands that neither the City nor the State of Alaska is responsible for decisions regarding security in the Building and agrees to hold both the City and the State of Alaska harmless from any damages that Tenant may incur should all or part of the Leased Premises be required for security purposes.

2. Appurtenances and Access.

(a) The City sublets to Tenant those fixtures and appurtenances now or hereafter belonging or appertaining to the Leased Premises, "as is, where is."

(b) The City sublets to Tenant those rights of ingress and egress to the Leased Premises as are reasonably necessary to the operation of its permitted operations on the Leased Premises, insofar as such rights of ingress and egress are consistent with the security needs of the Airport Terminal Building. The City, the State of Alaska, the Transportation Security Administration, or any other state or federal agency, may temporarily or permanently close doors, corridors, or otherwise restrict Tenant's access, without liability to the City, its agents, its elected officials, employees, or volunteers. Any such action shall neither be construed as an eviction of Tenant nor relieve Tenant from any duties or liabilities hereunder.

3. Encumbrances. The Leased Premises are sublet subject to deed restrictions: easements, rights-of-way, zoning and building restrictions, and governmental regulations now in effect or hereafter adopted by any governmental authority. Tenant shall not allow or cause any encumbrances to lie against the Leased Premises. Tenant shall not permit any mechanics', laborers' or materialmen's lien to stand against the Leased Premises or improvements thereto for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant or to Tenant's agents, contractors, or sublessees, in connection with work of any character performed or claimed to have been performed on the Leased Premises or improvements thereto by or at the direction or sufferance of Tenant, provided, however, that Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give to the City a bond in an amount sufficient to satisfy the provisions of AS 34.35.072.

4. Sublease is Subordinate to Master Lease. Tenant acknowledges that this Sublease is subordinate to and dependent on the Master Lease between the City and the State of Alaska, ADA05248 or any subsequent lease between the City and the State of Alaska. Should the City's lease with the State terminate for any reason, this Sublease shall immediately terminate, without any liability to Tenant on the part of the City.

Tenant shall be liable for all sums due and owing under this Sublease up to and including the date of such a termination.

5. Rental, Alcohol Concession Fee and Security Deposit.

(a) Rent. Tenant shall pay, during the entire term of this Sublease and any extension thereof or holdover period, a Monthly Base Rent of \$5.25 per square foot.

(b) Alcohol Concession Fee. In addition to Monthly Base Rent, Tenant shall pay an Alcohol Concession Fee as referenced in (f)(3) of this section and as required by the State of Alaska, Department of Transportation.

(c) Time for Payment. Tenant shall pay, by the fifth (5th) day of each calendar month all payments due the City.

(d) Interest on Under-Payments. If any examination, inspection or audit of the Tenant's books and records discloses an under-payment by Tenant, the Tenant will promptly pay the difference, plus interest at 10.5% per annum from the time payment was due plus all costs incurred in conducting the examination or audit.

(e) Security Deposit. City acknowledges it is in the possession of a \$5,000 security deposit previously made by Tenant or on behalf of Tenant.

(f) Alcohol Concession Fee/Terms and Conditions.

(1) Alcohol Sales Permitted. Tenant may sell alcoholic beverages on the Leased Premises subject to the following terms and conditions. Tenant's permission to sell alcoholic beverages on the Leased Premises is conditioned upon compliance with all covenants and conditions of the Sublease.

(2) On Premises Consumption Only. Tenant may sell alcoholic beverages for consumption on the Leased Premises only. Tenant shall not permit any person to remove alcoholic beverages purchased on the Leased Premises from the Leased Premises.

(3) Alcohol Concession Fee. Tenant shall pay the City an additional Alcohol Concession Fee, paid on a monthly basis, equal to ten percent (10%) of the gross alcohol sales for the preceding month. "Gross sales" means the following: All sales made and all cash and credit revenue of the Tenant, whether sales are for cash or on a charge basis, collected or uncollected from any alcoholic beverage sold. Articles, work or services furnished to any person in lieu of payment or in exchange for value received is deemed to be a cash sale. However, "Gross Sales" do not include the amount of any sales taxes, excise taxes, gross receipt taxes, and other similar taxes imposed by any federal, state, municipal, or government authority directly on the sale of merchandise, now or in the future, if the tax is added separately to the sale price and collected from customers at the time of the sale. No franchise, capital stock, income or similar tax based on income or profits will be deducted from gross sales.

(4) Local Bank Account. On or before February 1, 2019, Tenant shall establish an account with the Unalaska branch of Key Bank ("Local Bank Account"). During the term of this Sublease, Tenant shall deposit all cash receipts from gross sales made on the Leased Premises into the Local Bank Account.

(5) Auditing and Enforcement. By the fifth day of each month, during the term of this Sublease Tenant must submit a certified activity report to the City. The certified activity report must reflect Tenant's gross sales activity for alcoholic beverages for both the previous calendar month and the calendar year to date. Time is of the essence in meeting this requirement and the City will impose a fifty-dollar (\$50) penalty for each day Tenant's certified activity report is late. Each certified activity report must be in the form attached to this agreement as Exhibit B.

(6) Maintenance of Books and Records. To provide a satisfactory basis for confirming the accuracy of Tenant's certified activity reports, Tenant shall establish and maintain books and records concerning the operation of its business on the Leased Premises in accordance with generally accepted accounting principles. In particular Tenant must maintain the following records:

- (i) daily reconciliations of point of sale computer reports to cash deposits into the Local Bank Account and cash on hand.
- (ii) daily reconciliations of cash register receipts
- (ii) receipts for daily cash deposits into the Local Bank Account.
- (iv) daily reports of credit and debit card sales
- (v) daily point of sale computer reports of cash sales
- (vi) monthly alcohol inventory records
- (vii) monthly alcohol purchase records

(7) Audit. Tenant will permit the City to inspect, copy and audit Tenant's books, records and supporting data at the City's request during regular business hours. Audits may examine years as far back as the City, in its sole discretion, deems necessary. The City has the option of having the necessary books and records transported to a location within the City boundaries for inspection, copying, or audit, or performing the audit at the place Tenant maintains the records. If the records are maintained outside Unalaska, and the City elects to audit the books where they are maintained, Tenant will pay all costs incurred in travel, including round-trip air and ground transportation from Unalaska to the place the records are maintained, plus per diem at the then-current City rate for each day of travel and audit.

(8) Additional Supporting Data. Tenant will furnish the City with other financial or statistical reports as the City may require from time to time regarding the concession operated on the Leased Premises. Tenant shall furnish the City with the following reports each month as attachments to the Certified Activity Report:

(i) all records of deposits into the Local Bank Account for the previous month.

(ii) all alcohol purchase records for the previous month

(iii) the alcohol inventory report for the previous month

(9) Alcohol Liability Insurance. In addition to all other insurance required under the Sublease, Tenant shall obtain and maintain, for the entire term of its authorization to sell alcoholic beverages, liability insurance for personal injury, death or property damage arising out of the sale of alcoholic beverages on the Leased Premises. Said insurance shall be in an amount not less than \$1,000,000 combined single limit and shall be written by a responsible insurer(s) licensed to do business in the State of Alaska. Said insurance shall name both the City and the State of Alaska as additional named insureds. Tenant shall provide both the City and the State of Alaska with certificates of insurance for said insurance, at or before the time this Lease is signed, including in each instance, an endorsement providing that said insurance shall not be canceled or reduced without thirty (30) days' written notice to the City. Tenant shall immediately notify the City of any cancellation, termination, or decrease in this insurance. If, at any time during the term of this Sublease, a competent insurance agent deems this amount of coverage inadequate, or the State requires more insurance, Tenant will increase coverage to an adequate level. This insurance shall waive subrogation against both the City and the State of Alaska.

(10) Responsibility for Alcohol Over-Service. Tenant shall take care to instruct employees or others who may serve alcoholic beverages to customers that employees must discontinue service of alcohol to a customer that appears to be intoxicated. Tenant will be held liable for repair and/or cleaning costs of damage to, or contamination of, the common areas of the Airport Terminal Building, if in the sole opinion of the City, the damage or contamination was caused by intoxicated customers of Tenant or due to over-serving of alcohol to the customers by Tenant or Tenant's employees. Contamination by intoxicated customers of Tenant is defined as vomiting, urinating, defecating or pouring or throwing other noxious or objectionable material on the floor or walls of the common areas of the Airport Terminal Building. Materials for repair of damage or cleaning of contamination caused by Tenant's over-served customers will be charged to Tenant at cost plus Eighteen (18%) percent. Labor for repairs and/or cleaning of damage or contamination caused by Tenant's over-served customers will be charged to Tenant at \$70.00 per man hour. These charges may be waived if Tenant agrees to repair or clear damage or contamination in the common areas of the Airport Terminal Building at Tenant's expense.

(11) Hold Harmless. Tenant shall, at its sole expense defend, indemnify, and hold harmless both the City and the State of Alaska, their agents, elected officials, volunteers, and employees from and against any and all claims arising in any way out of the sale of alcoholic beverages on the Leased Premises, including, but not limited to, claims arising from any accident, injury, death or damage whatsoever caused to any person or property, whether on or off the Leased Premises.

(12) Performance Bond. On or before the commencement of the term of this Lease Tenant shall provide the City a performance bond in the form attached hereto in the amount of fifty-thousand dollars (\$50,000) for the faithful performance of all Tenant's payment and reporting obligations under this Agreement. This bond shall remain in effect for one year after expiration of the initial or any extended term of this Agreement. The bond shall be executed by a Surety authorized to do business in Alaska.

6. Taxes and Charges Treated as Additional Rent. Tenant agrees to pay to the public authorities charged with collection thereof, promptly as the same become due and payable, all taxes, assessments, general and special, permit, inspection and license fees and other public charges, whether of a like or different nature, levied upon or assessed against the Leased Premises and any buildings, structures, fixtures or improvements now or hereafter located thereon, or arising in respect of the occupancy, use or possession of the Leased Premises, including but not limited to municipal sales, real property and personal property taxes, and which are assessed and are or become payable to the City during the term of this Sublease. Tenant agrees to exhibit to the City, on demand, receipts evidencing payment of all taxes, assessments and public charges so payable by Tenant. These payments constitute part of Tenant's rent and failure to pay these taxes in a timely fashion to the appropriate authority is equivalent to the non-payment of rent. This paragraph shall not be construed to require double payments of said taxes (once as taxes and once as rent), but only once as taxes.

7. Utility Service. The City shall furnish electricity, heat, water, sewer and solid waste utility services to the Leased Premises during the term of this Sublease, plus any extension hereof. Tenant shall be solely responsible for installation, operation and maintenance of telephone, television and internet service. In no event shall the City be liable for any loss or damage caused by any variation, interruption or failure of such services. No temporary interruption or failure of such services incident to the making of repairs, alterations, or improvements, or due to accident or strike, or conditions or events beyond the City's reasonable control shall be deemed an eviction of Tenant or relieve Tenant of any of its obligations hereunder.

8. Utility Costs. In addition to Monthly Base Rent, Tenant shall pay to the City on or before the fifteenth day of each month during the term of this Sublease or any extension or holdover period for all electricity used by Tenant as measured by the installed meter adjacent to the Leased Premises at the applicable tariff plus any electrical utility demand charges billed by the City of Unalaska electric utility, plus Tenant's Share of utility Costs calculated as provided in paragraph 9.

9. Tenant's share of Utility Costs. As used in this Sublease Utility Costs means: all costs incurred by the City to provide heat to the Building. Tenant's share of utility Costs for any given month during the lease term shall equal the total Utility Costs multiplied by the ratio of the number of square feet identified in paragraph I(b) to 12,166 square feet (representing the total leasable square footage of the second floor of the Building).

10. Compliance with Laws and Care of Premises/Indemnity.

(a) Tenant shall comply with all applicable laws, ordinances and regulations of duly constituted public authorities now or hereafter enacted in any manner affecting the Leased Premises, or the sidewalks, streets, and ways adjacent thereto or any buildings, structures, fixtures and improvements or the use thereof, including, but not limited to, the City of Unalaska sales tax ordinance, whether or not any such laws, ordinances or regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Tenant agrees to defend, indemnify, and hold both the City and State of Alaska, their agents, elected officials, volunteers, and employees financially harmless (a) from the consequences of any violation of such laws, ordinances and/or regulations, (b) from all claims for damages on account of injuries, death or property damage resulting from such violation, and (c) from all claims for damages to the Tenant or a third party arising out of the partial or complete use of the Leased Premises for security purposes provided that such damage is not caused by the City's or the State's negligence.

(b) Tenant shall not permit any unlawful occupation, business or trade to be conducted on the Leased Premises or any use to be made thereof contrary to any law, ordinance or regulation.

(c) Tenant shall neither use nor permit any assignee or sublessee to use the Leased Premises for any purpose which poses a substantial risk of damage by means of fire or otherwise.

(d) Failure of Tenant to comply with any applicable provision of the City of Unalaska sales tax ordinance or property tax ordinance shall constitute a material breach of this sublease.

11. Maintenance Obligations.

(a) Tenant, at its own cost and expense, shall keep the Leased Premises and all Tenant's improvements which at any time during the term of this Sublease, plus any extensions or holdover periods, may be situated thereon, clean and in good condition and repair free of hazard or nuisance during the entire term of this Sublease, plus any extensions or holdover periods. Tenant shall provide its own janitorial service for the Leased Premises and remove trash from the Leased Premises. All proposed repairs or alterations must receive the advanced written approval of the City and any other government entity or agency whose approval is required.

(b) The City shall reasonably maintain the common areas of the Airport Terminal Building, including lobbies, stairs, corridors, restrooms, and common parking and access areas and Baggage Area, in reasonably good order and condition.

(c) Tenant expressly waives the right to make repairs at the expense of the City as provided for in any statute or law in effect at the time of the execution of this Sublease or any amendment thereof, or any other statute or law which may be hereafter passed during the term of this Sublease.

(d) Tenant shall always maintain the Leased Premises in keeping with good fire prevention practices.

(e) Tenant shall, upon expiration or termination of this Sublease, surrender and deliver the Leased Premises to the City in as good condition as when received by Tenant or as thereafter improved, ordinary wear and tear excepted.

12. Tenant's Rights.

Tenant shall have the following rights during the term of this Sublease:

(a) To make such alterations, additions and repairs to the Leased Premises as are reasonably necessary to the operation of Tenant's mode of business, subject to prior written approval under paragraph 11 (a).

(b) No structure, fixture or other improvement, the plans, specifications and proposed location of which have not first received the written approval of the City or any other governmental entity or agency from which approval is required, or which does not comply with such approved plans, specifications and locations, shall be constructed or maintained on the Leased Premises. All fixtures or improvements constructed or installed shall comply with all public laws, ordinances and regulations applicable thereto and shall be completed at the sole cost and expense of Tenant and without any cost, expense or liability to the City whatsoever.

(c) The approval by the City of any plans and specifications refers only to the conformity of such plans and specifications to the general -architectural plan for the Leased Premises and the Building. Such plans and specifications are not approved for architectural or engineering design, and by approving such plans and specifications, the City assumes no liability or responsibility therefore or for any defect in any structure, fixture or improvement constructed from such plans or specifications.

(d) All structures, fixtures and improvements, placed or attached on or about the Leased Premises by Tenant, shall at the City's option become the property of the City at the expiration of the Sublease or any extended term, unless removed by Tenant within thirty (30) days after the expiration or termination of the Sublease. Tenant shall be responsible for paying rent and all other sums payable by it under this Sublease while removing structures, fixtures or improvements. Upon expiration or termination of this Sublease, Tenant shall reimburse the City for damages to the Leased Premises or the Baggage Area caused by the removal of fixtures or improvements. The

City may require prior to removal such reasonable security against these damages as may be demanded by the City.

(e) Not later than the expiration or termination date of this Sublease, or of any extended term thereof, Tenant shall remove all readily movable items of personal property, provided that any damage caused to the Leased Premises or the Building by reason of such removal shall be immediately paid by Tenant. Any movable items or personal property not so removed by Tenant shall become the property of the City at the City's option.

(f) The City may, in its sole discretion, remove and store any or all property not timely removed from the Leased Premises or the Building. Storage shall be for the account and at the expense of Tenant, and without liability for loss thereof or damage thereto on the part of the City. If, after a period of thirty (30) days or more, Tenant has not paid all sums due and owing to the City under this Sublease or any Addendum hereto, including the reasonable cost of storage, the City may sell any or all of such property at a public or private sale. The City shall mail written notice of such sale to Tenant, at least ten (10) days prior to sale. The notice shall state the date, time and place of the sale. The City may set the time, place and manner of the sale in its sole discretion. The proceeds of any such sale shall be applied first to the costs of sale (including reasonable attorney's fees), then to storage charges and then to delinquent sums due or to become due the City under this Sublease or any Addendum hereto. Any remaining balance shall be mailed to Tenant.

13. Discrimination Prohibited. Tenant will not discriminate in the conduct of its permitted activities on the Leased Premises on the grounds of race, color, religion, national origin, ancestry, marital status, age, or gender.

14. Use of Premises.

(a) The Leased Premises may be used by Tenant or its assignees or, sublessees only to conduct operations reasonably necessary and incidental to the operation of a Restaurant. Use of the Leased Premises which is not reasonably necessary or incidental to the operation of a Restaurant is grounds for termination of this Sublease.

(b) Tenant shall not commit or permit any act that disturbs the quiet enjoyment of any other user of the Airport. Tenant shall not, without the written consent of the City, use any machinery or apparatus that will cause any significant noise or vibration, or disturb the other users in their quiet enjoyment.

15. Indemnification/Insurance.

(a) Tenant shall defend, indemnify and save harmless both the City and the State of Alaska, their agents, elected officials, volunteers, and employees from and against any and all claims, demands and causes of action of any nature whatsoever, and any expenses incident to defense of and by the City and the State of Alaska therefrom,

for any injury to or death of persons or loss of or damage to property occurring on the Leased Premises, or in any manner arising out of Tenant's use and occupation of the Leased Premises or the condition thereof, during the term of this Sublease or any extension or holdover period.

(b) In addition, Tenant shall procure and maintain public liability insurance coverage, written by responsible insurer(s) licensed to do business in the State of Alaska naming both the City and the State of Alaska as additional named insured, which coverage pertaining to the Leased Premises, or Tenant's activities thereon, shall not be less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, including bodily injury, property damage and personal injury liability. Tenant agrees to furnish certificates of insurance evidencing insurance coverage pertaining to the Leased Premises no later than February 1, 2019. The certificates of insurance shall contain an endorsement providing for not less than thirty (30, days' written notice to the City of intent to cancel or decrease the insurance. Tenant shall also maintain required Workers' Compensation insurance. If at any time during this Sublease or any extension or holdover period a competent insurance agent deems this amount of coverage inadequate, or the State requires more insurance, Tenant will immediately increase its coverage to an adequate level. All insurance provided by Tenant shall provide primary coverage and waive all subrogation rights against the City and the State and their respective agents and employees.

(c) Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected official, agents, employees and volunteers; or Tenant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expense. Such insurance must be written on an occurrence basis.

16. Quiet Enjoyment. Except as provided in this Sublease including, but not limited to 1 (d), and provided Tenant is not in default hereunder, the City covenants that Tenant shall have peaceful and quiet enjoyment of the Leased Premises and that the City will warrant and defend Tenant in the peaceful and quiet enjoyment of the Leased Premises.

17. Notices. Any and all notices required or permitted under this Sublease unless otherwise specified in writing by the party whose address is changed, shall be addressed as follows:

The City: City of Unalaska
P.O. Box 610
Unalaska, AK 99685
Attn: Peggy McLaughlin
Phone/Fax: 907-581-1254 / 907-581-2519

Tenant: Airport Restaurant, LLC
P.O. Box 921086
Dutch Harbor, AK 99692
Attn: Lisa Tran
Phone/Fax: 907-581-6007

18. Default. (a) If Tenant at any time during the term of this Sublease or any extension hereof (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal, which have or might have the effect of preventing Tenant from complying with the terms of this Sublease) shall (a) fail to make payment of any installment of rent or of any other sum herein specified to be paid by Tenant, or (b) fail to observe or perform any of Tenant's other covenants, agreements or obligations hereunder, and if any such default shall not be cured as to (a) within ten (10) days after mailing of written notice of such failure to make payments, or as to (b) within thirty (30) days after the City shall have mailed to Tenant written notice specifying such default or defaults, Tenant shall not have commenced to cure such default and proceed diligently to cure the same, or

- (i) If Tenant has filed a Petition under Chapter 11 of the Bankruptcy code, 11 U.S.C. 701 et. seq; or
- (ii) A voluntary petition under any other provision of said Bankruptcy Code; or
- (iii) If Tenant finally and without further possibility of appeal or review is adjudicated a bankrupt or insolvent; or
- (iv) Has a receiver or a Trustee appointed for all or substantially all of its business or assets on the ground of Tenant's insolvency; or
- (v) Has itself appointed as debtor-in-possession in a proceeding for a recognition or an arrangement; or
- (vi) files a petition, or a petition is filed on behalf of Tenant, seeking any relief under the Bankruptcy Code of the United States, or any other act of the United States or any state having the same general purposes; or
- (vii) Makes an assignment for the benefit of its creditors; or
- (viii) If the property of the Tenant is seized by any governmental officer or agency;

then in any such event the City shall have the right at its election, then or at any time thereafter, and while such default, defaults or events shall continue, to give Tenant

notice of termination of this Sublease. In such a case, on a date specified in such notice, which date shall not be less than thirty (30) days after the date of mailing of such notice ("termination date"), the term of this Sublease shall come to an end. Tenant hereby covenants to peaceably and quietly yield up and surrender to the City, not later than the termination date, said Leased Premises and all structures, buildings, improvements and equipment located thereon, subject to Tenant's removal rights under paragraph 12, and to execute and deliver to the City such instrument or instruments as shall be required by the City as will properly evidence termination of Tenant's rights hereunder or its interest therein.

(b) In the event of termination of this Sublease, the City shall have the right to repossess the Leased Premises and all structures, buildings, improvements and equipment, without process of law or any form of suit or proceedings, subject to Tenant's removal rights under 12, as well as the right to sue for and recover all rents and other sums accrued up to the time of such termination, and damages arising out of any breach on the part of Tenant, including damages for rent and other sums not then accrued. The City shall also have the right, without resuming possession of the Leased Premises or terminating this Sublease, to sue for and recover all rents and other sums, including damages, at any time and from time to time accruing hereunder.

(c) The City shall not be in default of any of its obligations hereunder unless and until it shall have unreasonably failed to perform said obligation within thirty (30) days, or such additional time as may be reasonably required, after receipt of written notice by the City specifying the default.

19. Costs upon Default/Interest. In the event either party shall be in default in the performance of any of its obligations under this Sublease, and an action is brought for the enforcement thereof, the defaulting party shall pay to the other all the expenses incurred therefore, including full, actual, reasonable attorney's fees. Any sums due from the Tenant under this Sublease shall accrue interest at 10.5% per annum from the date they are due until paid in full.

20. Rights or Remedies. No right or remedy herein conferred upon or reserved to the City is intended to be exclusive of any other right or remedy, and each right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

21. Waiver and Forbearance. Except to the extent that such party may otherwise agree in writing, no waiver by such party of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by such party to seek a remedy for any breach of the other party be deemed a waiver by such party of its rights or remedies with respect to such breach.

22. Emergency Access. Tenant shall provide the City with a complete set of keys to the Leased Premises for use in an emergency. Tenant shall also provide the City

with the name and home phone number of an appropriate contact person for use in an emergency.

Emergency Contact: Lisa Tran
Emergency Phone: 907-359-6006

In an emergency the City may be contacted through Scott Brown, Harbor Master, at 907-581-1254 (phone) or 907-581-2519 (fax).

23. Successors in Interest. This lease shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

24. Advertising. Tenant shall not post advertising of any sort without first obtaining the City's written consent, either on the Leased Premises, in the Building, or within sight of the Building. The City may condition its consent upon removal of the advertising upon expiration or termination of this Sublease; upon approval of form and content; and upon posting of security against damages from installation or removal in an amount the City in its discretion deems sufficient. The City's consent will not be unreasonably withheld.

25. Destruction of Improvements on Leased Premises. If all or part of the Leased Premises or 50% or more of the Building (regardless of whether the Leased Premises is affected) are destroyed or rendered unusable by fire, earthquake or other similar cause, Tenant shall remove the debris from the Leased Premises and clean up the Leased Premises within 270 days of the occurrence of such destruction. The square footage usable in calculating Monthly Base Rent shall be abated in the same proportion as the destroyed portion of the Leased Premises bears to the whole. The City may in such event and at its sole discretion terminate the Sublease on thirty (30) days' written notice to Tenant.

26. Assignments or Subletting.

(a) Tenant shall not assign or sublet or grant a security interest in the Leased Premises or any part thereof or in its fixtures or improvements thereon without the prior written consent of the City and the State of Alaska to such subletting, assignment or security interest. An assignment of this Sublease, or any part thereof, for loan security purposes shall not be construed as a subordination of the City's rights hereunder, nor a subordination of its fee. The City's permission to sublet or assign will not be unreasonably withheld. Tenant's request to assign, sublease or grant a security interest must be in writing and must show the name and address of the proposed assignee, sublessee or secured party. If Tenant is a corporation, any transfer of the lease by way of merger consolidation, liquidation, change in effective control or change in ownership of 30% or more of the stock of the corporation is an assignment for purposes of this paragraph.

(b) Secured party's rights as against the City in the event of expiration or termination of the Sublease. Upon either the natural expiration of this Sublease or

notice of termination being given due to a default by the Tenant under the terms of this Sublease, the holder of a security interest, which has been approved by the City in accordance with paragraph 26(a), in the leasehold or fixtures, improvements and chattels permissibly erected by Tenant in accordance with paragraph 12 (hereinafter "secured party") shall have the following rights and no others:

(1) If notice of default is given to Tenant under paragraph 18, secured party shall be mailed a copy of said notice at the address provided by Tenant for it pursuant to paragraph 26(a).

(2) If the Sublease is to be terminated due to an uncured default by the Tenant, secured party shall be mailed a copy of the termination notice at the address provided by Tenant for it pursuant to paragraph 26(a).

(3) Secured party has no independent right to cure a default by Tenant of its obligations under this Sublease. Tenant's right to cure its own default is limited to the provisions of paragraph 18. Secured party takes a security interest in this Sublease subject to the provisions of this Sublease, including but not limited to its termination provisions, and enjoys no greater rights under it than does Tenant. If this Sublease is terminated or naturally expires pursuant to its terms, secured party's security interest in the Sublease is immediately extinguished.

(4) If this Sublease is terminated due to a default by Tenant or expires and Tenant has failed to remove fixtures or improvements permissibly erected by Tenant under paragraph 12, in which the secured party holds a security interest, then the secured party may exercise its rights, if any, under AS 45.09.313. Secured party does not have the right to enter and remove fixtures and improvements, if any, granted to it by AS 45.09.313 until it gives to the City such reasonable security as may be demanded by the City to reimburse the City for damages to the Leased Premises or the Building which may be incurred in the course of removal.

27. Holding Over. In the event that the Tenant holds over at or after the end of the term, or any extended term, the tenancy shall be deemed a tenancy by sufferance and Tenant shall be liable for the current fair rental value of the property or the rent set by this Sublease, whichever is greater, in addition to all other sums payable by Tenant under this Sublease. All covenants required to be observed by Tenant continue into any holdover period.

28. Integration and Modification. This document contains the entire agreement of the parties hereto. All negotiations, statements, representations, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Sublease or the performance of either party hereto are merged and integrated into the terms of this document. This Sublease may not be modified or amended except by a writing signed by both parties hereto, and any purported amendment or modification is without effect until reduced to a writing signed by both parties hereto.

29. Governing Law/Venue. This Sublease shall be construed and governed by the laws of the State of Alaska. Any disputes related to this Sublease shall exclusively be litigated in state court in the Third Judicial District, State of Alaska, at Unalaska.

30. Covenants and Conditions. Each term and each provision of this Sublease shall be construed to be both a covenant and a condition.

31. Time of the Essence. Time is of the essence as to each term and provision of this Sublease to be performed by Tenant.

32. Severability. Any provision of this Sublease which shall prove to be invalid, void or illegal, shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

33. Hazardous Substances. Tenant shall strictly comply with all applicable laws, ordinances or regulations respecting the handling, containment and cleanup of discharges or releases of oil or hazardous substances, including petroleum fractions. In the event of a discharge or release of oil or a hazardous substance, including petroleum fractions, resulting from Tenant's activities in the Building, Tenant shall (1) promptly and completely clean up the discharge or release, in strict compliance with applicable laws, ordinances or regulations, and (2) defend, indemnify and save the City harmless from the consequences thereof, including the costs of state or federal remedial or compliance actions, whether informal or formal, all clean up and remediation costs needed to restore the site to its previous condition, and attorney's fees. As used in the Sublease, "Hazardous Substances" includes oil or petroleum fractions; asbestos; polychlorinated biphenyls (PCBs); any substance defined or listed by the State of Alaska or the Environmental Protection Agency as a hazardous substance under Title 46 of the Alaska Statutes or associated regulations or CERCLA, 42 U.S.C. 6901 et seq., or associated regulations; and any substance listed by the U.S. Department of Transportation or Environmental Protection Agency under 33 U.S.C. 1317, 49 C.F.R 172.101 or 40 C.F.R. 302.

34. Security/Keys.

(a) Under no circumstances shall Tenant prop or block open a door opening onto the aircraft apron or providing access between the outside or any unsecured part of the Building and any secured part of the Building (including but not limited to that part of the Building open to the public after having passed through security screening) without a properly badged individual in attendance. The City may assess a penalty of \$200 per violation, payable immediately.

(b) Tenant shall fully indemnify and hold the City harmless from any fines, penalties or other amounts charged to the City by the Federal Aviation Administration, Transportation Security Administration, Alaska Department of Transportation or other state or federal governmental agency resulting from an act or omission of Tenant. This includes, but is not limited to, security infractions committed by Tenant, its agents or employees.

(c) The City may conduct inspections from time to time as it in its sole discretion sees fit, in order to determine whether Tenant is complying with all applicable Federal Aviation Administration, Alaska Department of Transportation and other applicable laws or regulations respecting airport security or safety, or for any violation of the terms of this Sublease. The City may assess a penalty of \$200, payable immediately, for each infraction found.

(d) Tenant acknowledges that certain Federal regulations require the replacement of certain entire series of keys if one of that series is lost. Replacement of such series of keys shall be at Tenant's sole expense, if an agent or employee of Tenant is in whole or in part responsible for the loss.

DATED this _____ day of _____, 2019.

CITY OF UNALASKA, ALASKA

By: _____

Its: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On this__ day of _____ 2019, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Thomas Thomas, to me known to be the City Manager of the City of Unalaska, and known to me to be the person who executed this instrument on behalf of the City of Unalaska.

WITNESS my hand and official seal the day and year last above written.

My Commission Expires _____.

DATED this _____ day of _____, 2019.

Tenant: Airport Restaurant, LLC

By: _____

Its: _____

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

On this __ day of _____, 2019, before me, a Notary Public in and for the State of duly commissioned and sworn as such, personally appeared Tuyen Dinh, a member of Airport Restaurant, LLC and acknowledged this instrument to be a free and voluntary act and deed of the named Tenant for the uses and purposes herein mentioned, and on oath stated that he/she was authorized to execute this instrument.

WITNESS my hand and official seal the day and year last above written.

My Commission Expires _____.

Exhibit B

State of Alaska

Department of Transportation and Public Facilities

Attn: Finance Section
PO Box 196900
Anchorage, AK 99519-6900
(907) 269-0883

Attn: Finance Section
OR 2301 Peger Road
Fairbanks, AK 99709-5399
(907) 451-5247

Attn: Fiscal Office-M/S 2500
OR 3132 Channel Drive
Juneau, AK 99801-7898
(907) 465-8835

CERTIFIED ACTIVITY REPORT CONCESSION SALES

Under Agreement _____ at the Unalaska Airport, my firm is authorized by the State of Alaska, Department of Transportation and Public Facilities to Sell food, lodging and/or liquor. Following is a Certified Activity Report for sales for the period ending: _____

	<u>SALES</u>		<u>RATE</u>	
Food	_____	X	%	_____
Liquor	_____	X	%	_____

AMOUNT

A. TOTAL CONCESSION FEES DUE: _____

Enclosed is my check (payable to the 'City of Unalaska') covering the fees due.
Charge the amount due to the following credit card:

VISA MASTERCARD Expiration Date: _____

Credit card Number: _____

Name printed on card: _____

Billing Statement Address _____, Zip: _____

Check here if you want a receipt faxed to you at fax number _____

I certify that the figures presented above are true and correct.

Date: _____

Airport Restaurant LLC

** Signature

By: _____

Title: _____

Phone:

*If a credit card is used to make payment, the person signing must be an authorized signer on the credit card.