

THE STATE OF TEXAS §

Lease Agreement

COUNTY OF DALLAS §

THIS LEASE AGREEMENT is made and entered into by and between **THE RUNWAY CAFE**, (hereinafter referred to as "LESSEE"), and **THE CITY OF LANCASTER, TEXAS**, a home rule municipal corporation situated in Dallas County, Texas, (hereinafter referred to as "LESSOR").

W I T N E S S E T H :

FOR AND IN CONSIDERATION of the prompt and timely payment of the rentals set out herein and the true and faithful performance by LESSEE of all of its promises, covenants and obligations hereunder, LESSOR hereby demises and leases unto LESSEE and LESSEE hereby accepts for the term and subject to the provisions hereof, the following described real property, being space in the CITY OF LANCASTER AIRPORT TERMINAL BUILDING, and being more particularly described as follows:

SUITE NO. 101, containing approximately 720 square feet, as shown on Exhibit "A", which is attached hereto and made a part hereof for all intents and purposes.

Additionally, a small storage closet located within the terminal lobby area and a small footprint of space in the attached hangar as defined by the Airport Manager is included in the lease.

This Lease Agreement shall be further subject to the following terms, promises, agreements, conditions and covenants:

1.

The term of this Lease Agreement shall be for a period of three (3) years, commencing on the 1st day of February, 2010, and ending on the 31st day of January, 2013.

2.

As consideration for the entire term of this Lease Agreement, LESSEE hereby promises and agrees to pay LESSOR rent, in the total sum of ONE HUNDRED SEVENTY FIVE DOLLARS AND NO CENTS, (\$175.00) per month for the first six (6) months, and then as follows:

Beginning on August 1, 2010, LESSEE shall pay the Airport five percent (5%) of its monthly gross receipts collected. These payments shall be made no later than the first day of the second month following the month of its collection. (Example: LESSEE has \$10,000.00 in gross sales for June 2010. LESSEE must pay Airport 5% (.05) x 10,000 or \$500 no later than August 1, 2010.)

a. "Gross Receipts" shall include all receipts, whether by coin or currency, on account, by check or credit card, collected or uncollected, whether conducted on or off airport, derived by the LESSEE as a result of its operation of the concession rights herein granted, without exclusion, except those expressly permitted in paragraph 2.b. below. Gross receipts shall include the total amount actually charged to the customer by the LESSEE for, or in connection with, food or drink sold, prepared in, or delivered from the Tenant's Leased Premises at Lancaster Municipal Airport, regardless of where or by whom the payment is made or where the food is consumed.

b. Gross Receipts shall exclude receipts from the following:

- (1) Federal, State, City or municipal sales taxes now in effect or hereinafter levied which are separately stated and collected from customers of the Tenant.
- (2) The value of any equipment exchanged or transferred from or to other business locations of the LESSEE, where such exchanges or transfers are not made for the purpose of avoiding a sale or service fee by the LESSEE that would otherwise be made from or at the Lancaster Municipal Airport.
- (3) Refunds to customers. Receipts with respect to any refunds made to LESSEE'S customers, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit, providing the refund and reason therefore is documented along with the name and address of the person receiving the refund.
- (4) Documented discounts and rebates to customers.

- A. The sum of \$175.00 monthly as noted in paragraph (2) above, with the first payment due in advance.
- B. All rental payments are due monthly, in advance, on the first day of each month, during the term of this Lease Agreement.

- C. All payments not received by the 20<sup>th</sup> of such month shall be considered "past due".
- D. In addition to the monthly installments aforementioned, LESSEE promises to pay a late charge at the rate of five percent (5%) of the monthly installment for each month or portion of a month that any installment is past due; and a separate computation and payment of such late charge shall be made for each monthly installment that is past due, so that if two (2) monthly installments are past due, two (2) separate late charges shall accrue, et cetera.
- E. Prior to the subsequent lease of the above-described property at the end of the term of this Lease Agreement, LESSOR shall submit to LESSEE the terms of any lease agreement LESSOR contemplates entering with a third party. Within ten (10) days from the mailing of such terms to LESSEE, LESSEE shall have the right to accept and enter into a lease agreement with LESSOR on exactly the terms as such lease would contain between LESSOR and such third party. Such acceptance shall be made in writing.
- F. Upon at least fifteen (15) days written notice, Airport auditors or other authorized representatives shall, at any time during the term of this lease agreement, or within two years after the end of this agreement, or any extension to it, have access to, and the right to audit, examine, or reproduce any and all records of the LESSEE related to performance under this lease agreement. LESSEE shall retain all records associated with transactions at the Lancaster Municipal Airport within the Leased Premises or at another a mutually acceptable location in Texas for the longer of two (2) years after the lease agreement terminates or any extension of this agreement, or until completion of any pending audit or litigation action between the parties.

If the audit reveals that additional fees are due the Airport, LESSEE shall, upon written notice by the Airport pay such additional fees, plus interest and penalties, within ten (10) days of written notice. Interest will be calculated at one and one-half percent (1 ½%) per month for each month after the day the additional amount should have originally been paid. The penalty will be twenty percent (20%) of the total of the additional fees due (not including interest). If the audit reveals that the LESSEE has overpaid the fees due the Airport, such overpayment shall be credited to the LESSEE'S account, or refunded if the term of the lease agreement has expired and all other obligations by the LESSEE have been satisfied. If the

audit reveals an underpayment of more than five percent (5%), the cost of the audit shall be borne by the LESSEE.

In addition to the interest and penalty payments as stated above, any deliberate attempts to misrepresent gross receipt amounts, attempts to divert airport earned revenue to an off-airport site will be cause for default of the lease agreement.

3.

LESSEE shall use the leased premises only for the purposes of restaurant or catering services for airport customers or incidental uses as approved by the Airport Manager. Lessee covenants and agrees as follows:

- A. to furnish professional, prompt and efficient service, adequate to meet all reasonable demands for restaurant service at the Airport, on a fair and reasonable basis, and to charge prices for such services in accordance with its usual standards;
- B. to hire and retain at all times sufficient numbers of staff to provide prompt and efficient service. All employees having contact with the public shall be courteous, clean and neat in appearance. Should any employee fail to maintain such qualifications, Lessee, upon written notice from Lessor, shall take immediate corrective action or discharge such employee;
- ~~C. to remain open for such periods during the day and such days during the week as may be necessary to meet reasonable demands for such services.~~
- C. to remain open from the hours of 7:00 a.m. until 3 p.m., daily, Tuesday through Sunday, except for Thanksgiving, Christmas and New Years holiday days, or as approved by the Airport Manager on other observed municipal holidays or other reasonable occasions. Normal hours of operation will be posted in a prominent location of the leased premises.

In connection with its use of and activities in and about the leased premises and the Building, LESSEE, at its expense, will comply and will cause its employees, agents and invitees to comply with all applicable laws and ordinances, with all applicable rules and regulations of governmental agencies; and LESSEE will conduct itself and cause its employees, agents and invitees to conduct themselves, with full regard for the rights, convenience and welfare of all other tenants in the Building. Provided LESSEE has performed all of the terms, covenants, agreements

and conditions of this Lease Agreement, including the payment of rent, to be performed by LESSEE, LESSEE shall peaceably and quietly hold and enjoy the premises for the term hereof, without hindrance from LESSOR, subject to the terms and conditions of this Lease Agreement.

4.

LESSEE acknowledges that its acceptance of possession of the leased premises constitutes a conclusive admission that it has inspected the leased premises and has found them in good condition and repair.

5.

So long as LESSEE is not in default hereunder, LESSOR shall furnish the leased premises during reasonable and usual business hours the following services at LESSOR's sole expense:

- A. Heat and air conditioning during the customary periods of the year when and to the same extent LESSOR furnishes heat and air-conditioning for other portions of the Building.
- B. Electric current consisting of one hundred and ten (110) volt, sixty (60) cycle service for lighting and ordinary business appliances.
- C. Structural parts of the building and other improvements housing the leased premises (including, without limitation, the roof, foundation and bearing and exterior walls, windows, window glass, plate glass, doors, pest control and extermination) and the parking lot, drives, sidewalks and common areas.

6.

LESSEE covenants and agrees that it will not make or suffer any waste of the demised premises, nor will LESSEE suffer any holes to be drilled or made into brick or plaster nor any placards or decorative material to be placed on the premises. LESSEE further covenants and agrees that it will not make any material structural alterations or additions to the premises except as may be approved in advance, in writing, by LESSOR.

7.

LESSEE may, at its own expense, upon receiving prior written approval by LESSOR, install signs in the Terminal

Building indicating LESSEE's business. However, any signs so installed must be in keeping with the size, color, location, copy and manner of display of other signs throughout the Terminal Building. LESSEE agrees to reimburse LESSOR for any damage or injury to the premises resulting from the installation, maintenance or removal of any such signs.

8.

LESSEE covenants and agrees that it will, at its own expense, keep and maintain the demised premises in good condition; that LESSEE will do all work and make all repairs necessary or advisable to keep the demised premises from deteriorating in value or condition and to restore and maintain the demised premises, with the exception of normal wear and tear and aging consistent with normal office usage and time. LESSOR shall have the right and privilege, through its agents and officials, to make inspections of the demised premises and thereafter to make recommendations to LESSEE of any repairs that in LESSOR's opinion are necessary to be performed by LESSEE upon the demised premises in accordance with the foregoing. LESSEE agrees and covenants that it shall commence repairs within thirty (30) days from the date that such recommendations are made. Such repairs shall be made in an expeditious and workmanlike manner. In the event that LESSEE shall fail to commence such recommended repairs within the time provided, it is understood and agreed that LESSOR may, within its discretion, make such repairs as it deems necessary for and on behalf of LESSEE; and, in such event, the cost of such repairs shall be paid by LESSEE within ten (10) days following the completion of said repairs.

**LESSEE shall be responsible to clean, maintain, and/or service exhaust ventilator filters, sewage grease traps, and fire extinguisher systems that exclusively service the food service area. Components of these systems may be located beyond the specified boundaries of the leased premises. Access to these areas will be coordinated with the designated representative of the Airport.**

9.

LESSEE covenants and agrees that it shall not make, suffer or permit any unlawful, immoral or offensive use of the demised premises, nor shall LESSEE permit any loud, abusive or obscene language on the demised premises.

LESSEE, its agents, servants and employees agree to maintain a friendly and cooperative, though competitive, relationship with other companies engaged in similar or like business or with other tenants on Airport premises. Lessee shall not engage in open public disputes, disagreements, denigration or conflicts regarding activities at the Airport which would tend to deteriorate the quality of the service of Lessee or its competitors or other tenants or which would be incompatible with the best interest of the public at the Airport.

10.

LESSEE covenants and agrees to maintain the demised premises in a clean and sanitary condition at all times.

LESSEE shall insure that required periodic health/sanitation inspections are conducted by appropriate authority and that such inspection reports meet the satisfactory requirements of the agency conducting the inspections.

LESSEE shall be responsible for disposal of its own trash accumulations by depositing it in the nearest exterior trash dumpster on a daily basis. Trash receptacles inside the terminal building are for customer use only. Tenant also agrees to participate in the LESSOR's recycling program by depositing all recyclable products in the appropriate recycling container in lieu of the trash dumpster.

11.

LESSEE covenants that it shall not do, nor permit to be done any act, nor store any material, which will in any manner conflict with any term or provision of any policy of insurance insuring the Terminal Building or its contents.

12.

LESSEE covenants and agrees to comply with all laws, federal, state and local, and rules and regulations established by LESSOR for the operation and use of the Terminal Building.

13.

It is understood and agreed that LESSOR, through the execution of this Lease Agreement, does not waive or surrender any of its governmental powers.

14.

LESSEE agrees to and shall indemnify and hold harmless LESSOR, its officials, officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorneys fees for injury to or death of any person, or for damage to any property arising out of or in connection with this Lease Agreement or on or about the demised premises. Such indemnity shall apply where the claims, losses, damages, causes of action, suits or liability arise in whole or part from the negligence of LESSEE or LESSOR, their officers, officials, agents and employees.

It is the express intention of the parties hereto, both LESSEE and LESSOR, that the indemnity provided for in this paragraph is indemnity by LESSEE to indemnify and protect LESSOR from the consequences of LESSOR'S own negligence, whether that negligence is the sole or concurring cause of the injury, death or damage.

15.

It is expressly agreed and understood by the parties that this Lease Agreement shall not give rise to any relationship between the parties of employer-employee, agency, partnership, joint venture or any other form of joint enterprise.

16.

LESSEE will procure, pay for and maintain during the term of this Lease Agreement the minimum applicable insurance limits and coverage described below written by companies licensed in the State of Texas. LESSOR will be named an additional insured and will be given a minimum of thirty (30) days notice prior to any change in or cancellation of coverage.

A. LESSEE'S Insurance: Without limiting any of the other obligations or liabilities of LESSEE, during the term of this Lease Agreement, LESSEE at its own expense shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to LESSOR. Certificates of each policy shall be delivered to LESSOR before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, nonrenewed or materially changed without thirty (30) days advance written notice being given to the Owner, except when the policy is

being canceled for nonpayment of premium, in which case ten (10) days advance written notice is required. Prior to the effective date of cancellation, LESSEE must deliver to LESSOR a replacement certificate of insurance or proof of reinstatement.

1. Commercial General Liability Insurance, including independent contractor's liability and contractual liability covering, but not limited to, the liability assumed under the indemnification provisions of this Lease Agreement, fully insuring LESSEE'S liability for injury to or death of LESSOR'S employees and any third parties, extended to include personal injury liability coverage, with damage to property of third parties, with minimum limits as set forth below:

General Aggregate	\$500,000
Products-Components/ Operations Aggregate	\$500,000
Each Occurrence	\$500,000
Medical Expense (any one person)	\$ 5,000

2. Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and nonowned vehicles, with a combined bodily injury and property damage minimum limit of \$500,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 bodily injury (per accident), and \$100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

B. Policy Endorsements and Special Conditions: Each insurance policy to be furnished by LESSEE shall include the following conditions by endorsement to the policy:

1. Name the LESSOR as an additional insured as to all applicable coverage;
2. Each policy shall require that thirty (30) days prior to the cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to LESSOR by certified mail. If the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to LESSOR is required;

3. The term "LESSOR" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of LESSOR and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of LESSOR;
  4. The policy phrase "other insurance" shall not apply to LESSOR where LESSOR is an additional insured on the policy; and
  5. All provisions of this Lease Agreement concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- C. Insurance furnished by LESSEE shall be in accordance with the following requirements:
1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by LESSEE. LESSOR'S decision thereon shall be final;
  2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
  3. All liability policies required herein shall be written with an "occurrence" basis coverage trigger.
- D. LESSEE agrees to the following:
1. LESSEE hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against LESSOR, it being the intention that the insurance policies shall protect all parties to the agreement and be primary coverage for all losses covered by the policies;
  2. Companies issuing the insurance policies and LESSEE shall have no recourse against LESSOR for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of LESSEE;

3. Approval, disapproval or failure to act by LESSEE regarding any insurance supplied by LESSEE shall not relieve LESSEE of full responsibility or liability for damages and accidents as set forth in the Lease Agreement documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate LESSEE from liability; and
  4. No special payments shall be made for any insurance that LESSEE is required to carry; all are included in the agreement price and the agreement unit prices.
- E. Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

17.

LESSEE hereby grants a lien to LESSOR upon all personal property belonging to LESSEE in or on the above-described premises as a possessory pledge to secure the timely performance by LESSEE of all its obligations hereunder; and in the event of default by LESSEE, LESSOR is authorized to seize and hold all of the personal property belonging to LESSEE on the premises to secure such performance, to sell same at public or private sale and to apply the proceeds thereof first to pay the expenses of the sale, and to pay all amounts due to LESSOR hereunder, holding the balance remaining subject to LESSEE's order. A copy of this Lease Agreement shall be the only warrant required.

18.

LESSOR or its officers, agents and representatives shall have the right to enter into and upon any and all parts of the premises at all reasonable hours to (a) inspect same or clean or make repairs or alterations or additions as LESSOR may deem necessary (but without any obligation to do so); or (b) show the premises to prospective tenants, purchasers or lenders; and LESSEE shall not be entitled to any abatement or reduction of rent by reason thereof, nor shall such entry be deemed to be an actual or constructive eviction.

19.

This Lease Agreement may be terminated by LESSEE by the giving of thirty (30) days written notice thereof to LESSOR. LESSEE agrees and covenants that it will, at the end of the term of this Lease Agreement, or upon termination of this Lease Agreement, peaceably deliver up unto LESSOR the demised premises and all appurtenances or improvements thereon in a good state of repair, as aforesaid, unencumbered, vacant and in good condition.

20.

LESSEE covenants and agrees that it shall have no power to do any act or make any contract that creates any lien upon property LESSOR owns or has an interest; and upon any such purported lien being created or filed of record, LESSEE, at its sole cost and expense, shall liquidate and discharge same immediately.

21.

A. The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

1. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days.
2. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.
3. LESSEE shall desert or vacate any substantial portion of the premises for a period of five (5) days or more.
4. It is recognized that if LESSEE is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate LESSEE'S performance of this Lease Agreement. Accordingly, it is agreed that upon the occurrence of any such event, LESSOR shall be entitled to request of LESSEE or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of

delivery of the request shall entitle LESSOR to terminate this Lease Agreement and to the accompanying rights set forth below.

- B. Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:
1. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to relet the premises on satisfactory terms or otherwise.
  2. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, relet the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such reletting.
  3. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.
- C. No reentry or taking possession of the premises by LESSOR shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice

of such intention be given to LESSEE. Notwithstanding any such reletting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease Agreement for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of rent following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease Agreement or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this Lease Agreement for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

22.

LESSEE covenants and agrees it shall not sublet or assign all or any part of its rights, privileges or duties under this Lease Agreement without prior written approval of LESSOR.

23.

It is agreed by the parties that any action, real or asserted, at law or in equity, which arises out of the terms or provisions of this Lease Agreement or out of any use of or occurrence on the demised premises shall be governed by the laws of the State of Texas, venue for such action lying in Dallas County, Texas.

24.

In any action brought by LESSOR for the enforcement of any of the terms of this Lease Agreement against LESSEE, LESSOR shall be entitled to recover reasonable attorney's fees.

25.

This instrument constitutes the entire agreement by the parties hereto, and any prior or contemporaneous, oral or written agreement which purports to vary from the terms hereof shall be void.

26.

All modifications or amendments to this Lease Agreement shall be evidenced in writing, and any purported oral modifications of this Lease Agreement shall be void.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on this the \_\_\_\_ day of \_\_\_\_\_, 2010.

**THE RUNWAY CAFE**

BY \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**CITY OF LANCASTER, TEXAS**

BY \_\_\_\_\_  
Rickey L. Childers  
City Manager