

HOSPITALITYLAWYER.COM PRESENTS:

THE **HOSPITALITY LAW**
CONFERENCE

FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 10th - 12th, 2014

AIRPORT LEASES FOR FOOD & BEVERAGE OPERATIONS

Heather Lacey & Richard Heller, Legal Seafood

PRESENTERS



Richard Heller - Senior Vice President, Legal Seafood

- General Counsel
- responsible for business planning and commercial real estate
- served as a panelist on a number of real estate related panels

Heather Lacey - Associate General Counsel, Legal Seafood

- defends Legal Sea Foods against complaints filed in various federal and state agencies
- served Legal Sea Foods' senior executives, directors, managers and human resource professionals in all matters involving employees
- manages the Risk & Safety Department



If it isn't fresh, it isn't Legal!®

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AIRPORT LEASES FOR FOOD & BEVERAGE OPERATIONS

AIRPORTS

A. Components of Transaction

1. Parties to Arrangement:

Authority/Municipality;

Operator/Developer; Single Operator

a. Direct arrangement with Airport Authority or Municipality

b. Prime Concessionaires: an entity that operates all of the concessions in the airport or terminal: can be a developer, airline, or operator

c. Developer/Manager: development, leasing, and management of retail/food beverage programs: by terminal or airport

AIRPORTS

A. Components of Transaction

2. Process

- a. RFP process (Request for Proposal): process to make bidding, selection, and award as fair as possible.
 - i. Deadlines: with significant/detailed financial and operational information required in submission
 - ii. All filings are a matter of public record and subject to FOIA (Freedom of Information Act)
- b. Requirement of ACDBE (Airport Concession Disadvantage Business Enterprise)
- c. Award

AIRPORTS

A. Components of Transaction

3. Factors in selection location

- a. Terminals: Airlines: Number of Enplanements
- b. Location – pre v. post security location



AIRPORTS

A. Components of Transaction

4. Economic Terms

a. Term – 5-10 years

b. Minimum Annual Guaranteed Rent (MAG)

i. Increases annually either tied to enplanements or percentage of total rent paid in previous year

ii. Generally much higher than in street location

c. Percentage Rent: may increase based on threshold of annual sales; also may be different percentage based on food v. alcohol

AIRPORTS

A. Components of Transaction

4. Economic Terms

d. Additional Charges

- i. Utilities (does not include telephone or data)
- ii. Storage
- iii. Taxes or PILOT (Payment in Lieu of Taxes)
- iv. Logistical Support Charges – delivery through a central facility
- v. Marketing Fund
- vi. Common Area Maintenance Expenses – generally includes cleaning and janitorial expenses related to the common areas

AIRPORTS

B. Transaction Documents

1. Form: either sublease or concession agreement (a license agreement which does not create an estate in real property)
2. Master Lease Agreement between Authority (or Municipality) and Master Concessionaire or Developer – Sublease or Concession Agreement is subordinate

AIRPORTS


B. Transaction Documents

3. Specific Provisions unique to Airport Leases

- a. Relocation/Termination Provision: common in Airport agreement to provide flexibility to the authority and TSA (see provision on Airports – Attachment A)
- b. Insurance and Indemnify – Authority/Municipality will not provide a waiver of subrogation and will except its gross negligence from indemnity protection
- c. Street Pricing Provision: limitation on pricing as compared with pricing at locations outside Airport (see Airports – Attachment B)
- d. Reporting Requirements (see Airports – Attachment C): rigorous and detailed
- e. Labor Harmony provision (see Airports – Attachment D)

AIRPORTS

B. Transaction Documents

4. Provisions not likely to be seen in transaction documents
 - a. Radius Restriction
 - b. Co-Tenancy Protection
 - c. Exclusivity
 - d. Early Termination (kick out) provisions
- 
- The background of the slide is a blue-tinted photograph of an airport tarmac. In the foreground, the nose and cockpit windows of a large white cargo plane are visible. In the background, another cargo plane is parked near a hangar with "Alaska Cargo" written on its side. The sky is clear and blue.

AIRPORTS

C. Construction Related Issues – Critical to Assess at Outset

1. Plan Approval Process and Timing – usually can take between 6 and 8 months – requires layers of approval: Developer/Master Concessionaire; Authority/Municipality; Inspectional Services
2. Design Criteria – specific – may impact restaurant's prototype review carefully at RFP process if available

AIRPORTS

C. Construction Related Issues – Critical to Assess at Outset

3. Utilities: critical – assess at outset
 - a. Utility feeds – who pays from central box – may impact significantly cost of build out
 - b. Gas – determine availability – may impact ability to operate
 - c. HVAC and air handling units – existing HVAC in Airport may not be sufficient to support restaurant(s) assess cost at outset
 - d. Grease trap – requirement and location (see Airports – Attachment E)
 - e. Water and sewer feeds – location and capacity

AIRPORTS

C. Construction Related Issues – Critical to Assess at Outset

4. Logistics in constructing premises
 - a. Badging of contractor, subcontractor, and employees – background checks and fingerprinting
 - b. Delivery of construction materials and equipment – post v. pre-security
 - c. Timing of construction – delivery of materials and requirement that construction occur in evening
5. Retain architect and general contractor who are familiar with Airport construction
6. Requirement of stated minimum investment and payment and performance bonds

AIRPORTS

D. Operational Issues

1. Hours of Operation – very expansive – tied to first and last departing flights (See Airports – Attachment F)
2. Use clauses – may be restrictive: will require menu approval and approval of items to be added to menu (by both Developer/Master Concessionaire and Airport Authority)
3. Employees: process may affect hiring (timing) and training – will require background check, fingerprinting and badging – at outset determine how long entire process will take and cost of badging. Upon termination of employee, critical to collect employee's badge; otherwise, TSA or Airport may impose fine
4. Street pricing
5. Requirement of Program Responding to Customer Complaints (see Airports – Attachment G)
6. Compliance with additional legal requirements re: prevailing wage and local municipal requirements
7. Parking limitation for employees (see Airports – Attachment H)

EMPLOYEE-RELATED ISSUES

Badging

- Pre-Hire Requirements
- May Impact Training
- Use Disclosure Documents
- Lose Badge; Lose Employment
- Collection of Badges Upon Separation as required by 49 USCS Section 4630(a)(6)
- Civil penalties for failure to comply
- Inability to have additional employees badged

MASSACHUSETTS & PHILADELPHIA CRIMINAL RECORD INQUIRY

TO BE FILLED OUT BY APPLICANT (AFTER ASSESSMENT)

PLEASE READ:

An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to any inquiry herein relative to prior arrests, criminal court appearances or convictions. In addition, an applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution.

PLEASE COMPLETE:

Have you ever been convicted of a felony? ___ Yes ___ No

Within the past five (5) years, have you been convicted of, or completed a period of incarceration due to a conviction of, a misdemeanor (other than drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace)?

___ Yes ___ No

If you answered "yes" to either or both question(s), please identify the crime(s), date(s), court(s), and disposition(s):

NOTE: A CRIMINAL CONVICTION IS NOT AN AUTOMATIC BAR TO EMPLOYMENT EXCEPT AS REQUIRED BY APPLICABLE LAW OR A GOVERNMENTAL AGENCY SUCH AS ALCOHOL BEVERAGE CONTROL COMMISSION AND/OR TRANSPORTATION SECURITY ADMINISTRATION ("TSA") (AIRPORT LOCATIONS). ALSO, AN OFFER OF EMPLOYMENT MAY BE CONTINGENT UPON THE COMPANY'S DETERMINATION THAT THE RESULTS OF A DETAILED CRIMINAL BACKGROUND CHECK ARE SATISFACTORY (DEPENDING UPON THE POSITION APPLIED FOR AND/OR OUTSIDE AGENCY REQUIREMENTS, E.G., TSA BADGING REQUIREMENTS IN AIRPORT LOCATIONS).

Signature _____ Date _____

Print Name _____

Location _____

Position _____

Hiring Manager _____

[Date]

[Recipient Name & Address]

Re.: ID Badge—Property of Philadelphia International Airport

To: [Employee Name]:

Our records indicate that you are in possession of an employee badge under the sponsorship of Legal Sea Foods, LLC.

This badge is issued for your use while you are working at the Philadelphia International Airport. It is not transferable and is the sole property of the Philadelphia International Airport. Therefore, the badge must be returned immediately upon separation of employment (voluntary or involuntary), or upon demand.

At your earliest possible convenience, please contact me at the Legal Sea Foods office, as listed above, to resolve this matter.

The badge may also be returned to:

**Philadelphia International Airport
Director of Safety and Security
Terminal E
Philadelphia, PA 19153**

Should you return the badge yourself, please be sure to inform me. If the badge is not returned within ten (10) days of receipt of this notice, you may be assessed a fine ranging from \$100.00 to \$325.00; this fine will be levied by the airport on behalf of the City of Philadelphia.

Thank you for your prompt attention to this serious matter. I shall await your immediate response.

Sincerely,

Mamey Whittaker
Risk and Safety Manager
Email: mwhittaker@legalseafoods.com

Fax: 617 530-9647

EMPLOYEE-RELATED ISSUES

Special Wage Rates and Fringe Benefit Requirements

- Example, 21st Century Minimum Wage Act Philadelphia, PA (Chapter 17-1300)
- “Employer” includes recipients of city leases, concessions, or franchises which employs more than 25 employees
- 150% of minimum wage $\$7.25 = \10.88
- Other Required Fringe Benefits

QUESTIONS & ANSWERS

