



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

Item No.
9

Meeting Date: **APRIL 4, 2013**

Subject:

Consent to Sublease Agreement Between Stellar Partners, Inc. and Brookstone Company, Inc. (This item was continued from the March 7, 2013 Board Meeting)

Recommendation:

Adopt Resolution No. 2013-0027, consenting to a sublease agreement between Stellar Partners, Inc. and Brookstone Company, Inc., and authorizing the President/CEO to execute the consent agreement.

Background/Justification:

In August 2011, the Board awarded a non-exclusive Lease to Stellar Partners, Inc. (Stellar), for seven retail locations in Terminals 1 and 2. The Lease provides that Stellar shall not assign the Lease or any of the obligations in whole or in part, without the express written consent of the Authority. Additionally, Authority Policy 6.01 requires that the Executive Director (President/CEO) bring all proposed subleases exceeding five years in duration to the Board for its consent. Stellar proposes to sublease the "Brookstone" store located in Terminal 2 West in accordance with its RFP proposal. Attachment A delineates the location of the proposed subleasehold.

Brookstone will operate under the same terms and conditions as are required by the Lease. The seven (7) year term of the sublease will be coterminous with the Lease. Staff has reviewed Brookstone's financial capacity and management ability and believes that Brookstone will be able to develop and operate the concession in accordance with the Lease.

This item was continued from the March 7, 2013, Board meeting. Subsequent to that meeting, Board members submitted several questions regarding the item. Those questions are answered in an attached memorandum (Attachment B).

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Fiscal Impact:

The proposed action will not impact the Minimum Annual Guaranteed (MAG) rent to the Authority payable by Stellar Partners, Inc., which is \$783,000.

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy
 Customer Strategy
 Employee Strategy
 Financial Strategy
 Operations Strategy

Environmental Review:

- A. California Environmental Quality Act ("CEQA") review: This Board action is not a project that would have a significant effect on the environment as defined by the CEQA, as amended, 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA Pub. Res. Code §21065.
- B. California Coastal Act review: This Board action is not a "development" as defined by the California Coastal Act. Pub. Res. Code §30106.

Equal Opportunity Program:

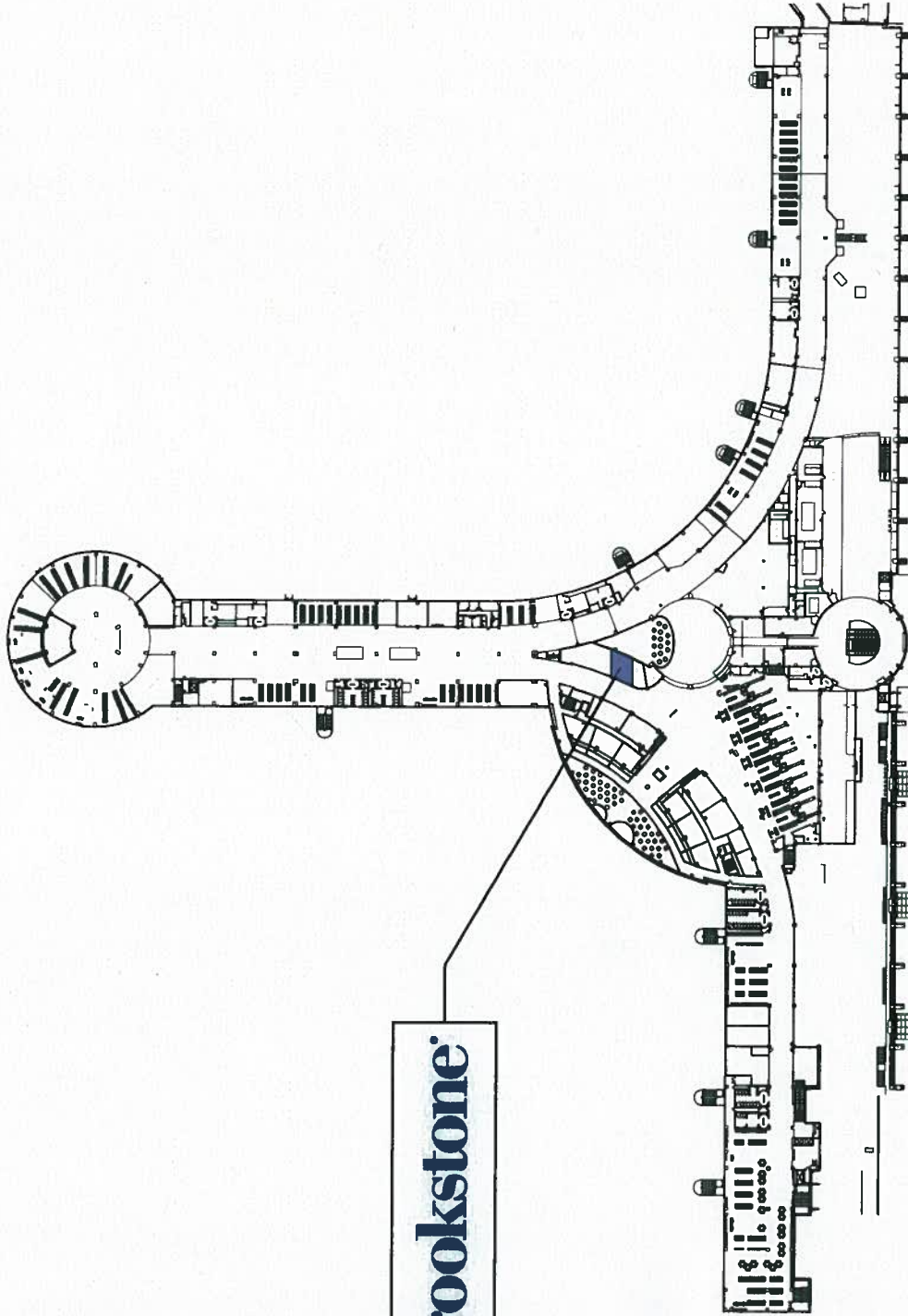
The Authority's small business program promotes the utilization of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunity for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has an Airport Concession Disadvantaged Business Enterprise ("ACDBE") Plan as required by Department of Transportation, 49 Code of Federal Regulations Part 23. The ACDBE Plan calls for the Authority to submit a triennial overall goal for ACDBE participation on all concession projects.

This is an airport concession opportunity; therefore, it will be applied toward the Authority's overall ACDBE goal. Stellar Partners, Inc. is a certified ACDBE. Brookstone is not an ACDBE. If this sublease is approved, Stellar will have an estimated 83% ACDBE participation, which is consistent with the original proposal.

Prepared by:

VERNON D. EVANS
VICE PRESIDENT, FINANCE/TREASURER



Brookstone



TERMINAL 2 WEST



Attachment B



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY

BOARD COMMUNICATION

Date: March 27, 2013
To: Board Members
From: Thella F. Bowens, President/CEO
Subject: Board Member Questions/Answers regarding Consent to Sublease Agreement Between Stellar Partners, Inc. and Brookstone Company, Inc.

Following Board direction to continue the subject item from the March 7, 2013, meeting, I asked that any questions that Board Member may have on this matter be directed to me for response. The following is a summary of questions received to-date and staff's responses:

Q1: What are the classifications of the workers Stellar hired and what positions were they were offered?

A: The chart below was created from the Authority's worker retention database and discussion with Stellar Partners, Inc.:

Stellar Partners

Worker Retention Hiring Stats (as of 3/25/13)

<u>Prior Employer</u>	<u>Prior Job Title</u>	<u>Job Class Description</u>	<u>Job Title at Hire</u>	<u>Employee Count</u>
Casa Unlimited	Sales Associate	Merchandise	Sales Associate	4
Host	Snack Bar Attendant	Food and Beverage	Sales Associate	1
	Sales Associate	Merchandise	Sales Associate	7
Nine Dragons	Sales Associate	Food and Beverage	Sales Associate	6
	Sales Associate	Merchandise	Sales Associate	3
PCI / Procurement Concepts	Sales Associate	Merchandise	Sales Associate	1
Exceptions				
Host	Utility	Merchandise	Warehouse Associate	1
Host	Utility	Merchandise	Warehouse Supervisor	1
Host	Sales Associate	Merchandise	Supervisor	1

Total Employees Hired 25

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Q2: Please provide an update on the status of the overall retention program.

A: As of March 27, 2013, there are approximately 34 eligible employees that remain available for recruitment under the Worker Retention Program, calculated as follows:

Summary of Eligible Employees	
Eligible Employees (as of 3/25/13)	357
Retained by HMS Host	(174)
Hired by Other Concessionaires	(98)
Voluntarily took layoffs to be recalled	(51)
Employees Available for Recruitment	34

Q3: Has Stellar hired any employees from outside the retention pool?

A: No.

Q4: Was this sublease contemplated as part of the original proposal?

A: Yes, a letter of intent between Brookstone and Stellar Partners, Inc., dated May 12, 2011, was submitted as part of Stellar Partners original Concession Development Program RFP proposal. This document is provided as Exhibit 1 to this memo.

Q5: Are union members still in the worker retention pool and eligible for hire?

A: Yes. Eligibility in the Board's adopted Worker Retention Program (Resolution No. 2010-0142R) does not delineate between union or non-union membership. Eligibility is based on employees completing and submitting a worker retention application to the Authority, having at least twelve (12) months of prior employment with the previous master concessionaire (HMS Host) or a subtenant to HMS Host and holding a non-supervisory position.

Exhibit 1

STELLAR PARTNERS, INC.

*Beaumont Business Center
5402 Beaumont Center Boulevard
Suite 108
Tampa, Florida 33634*

May 12, 2011

Mr. Thomas Moynihan
Vice President
Brookstone Company, Inc.
One Innovation Way
Merrimack, NH 03054-4873

Re: Sublease for Concession at
San Diego International Airport

Dear Thomas:

Stellar Partners, Inc. ("Stellar") is intending to submit a response to the request for proposal (the "RFP") solicited by the San Diego County Airport Authority (the "Authority") with regard to the designing, building and operation of a combination of newsstands and specialty retail stores (the "Concessions") within the San Diego International Airport (the "Airport"). If Stellar is awarded the Concessions by the Authority, Stellar intends to enter into a Concession Lease with the Authority (the "Prime Lease") for certain retail concessions at the Airport described in the RFP, which shall include the Subleased Concession, as defined below. A form of the proposed Prime Lease was posted on the Authority's website and has been made available to both Stellar and Brookstone ("Brookstone"). Conditioned upon Stellar being awarded the Concessions, Stellar and Brookstone have reached mutual understandings pursuant to which Stellar would enter into a Sublease Agreement (the "Sublease") pursuant to which Brookstone would sublease from Stellar a portion of the Concessions, consisting of the specialty retail space identified as T2W-2015 (the "Subleased Concession"). In accordance with the requirements of Attachment O to the RFP regarding the contents of a letter of intent submitted together with a response, attached hereto as Exhibit A is a description of Brookstone's qualifications to operate the Subleased Concession and to fulfill all other obligations set forth in the Sublease.

The purpose of this letter is to set forth the terms of the proposed Sublease that have been negotiated between Stellar and Brookstone. This letter shall not be construed as a binding offer or agreement, but rather as an expression of our present intent. Consummation of the proposed Sublease is expressly conditioned upon the award of the Prime Lease by the Authority to Stellar, the negotiation and execution of a Sublease in a form acceptable to the parties, and the approval of the terms of the Sublease by the Authority.

The following sets forth the principal terms and conditions that would be set forth in a Sublease:

Mr. Thomas Moynihan, Vice President
Brookstone Company, Inc.
May 12, 2011
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1. Subleased Concession. The Subleased Concession shall consist of the specialty retail space identified as T2W-2015, consisting of approximately 725 sq. ft. Brookstone's use of the Subleased Concession shall be only for the sale of gifts electronics, CDs, gadgets and other items typically sold in Brookstone stores, and any and all other items specifically permitted pursuant to the Prime Lease for the Subleased Concession, and shall be subject to the restrictions set forth therein. To the extent that storage space is provided to Stellar under the Prime Lease, a proportionate amount of such storage space shall be made available to Brookstone on the same terms and conditions provided to Stellar under the Prime Lease.

2. Term of Sublease. The term of the Sublease shall be in accordance with the term of the Prime Lease to be entered into by the Authority and Stellar, which shall be for an initial term of 7 years (the "Initial Term") and for any and all extensions and term modifications in accordance therewith, provided, however, it is acknowledged that the delivery date of the premises pursuant to the Prime Lease may be different than the delivery date of the Subleased Concession pursuant to the Sublease.

3. Rent. Brookstone shall pay rent as set forth below ("Rent"), as well as Support Premises Rent, Additional Rent and all other fees and charges imposed pursuant to the Prime Lease. Rent for each month during the first period (as defined in the Prime Lease), shall be an amount equal to thirteen percent (13%) of Gross Receipts (as defined in the Prime Lease) from such month ("Percentage Rent"). For each month during the second period (as defined in the Prime Lease), Rent shall be an amount equal to the greater of Percentage Rent or one-twelfth of the Minimum Annual Guarantee ("MAG"), which, for the first year of the second period, shall be One Hundred Seven Thousand Five Hundred Dollars (\$107,500.00) annually. Each following year, the MAG shall increase to an amount equal to the greater of: (i) ninety percent (90%) of the actual Rent paid during the previous year, or (ii) one hundred three percent (103%) of the MAG paid during the previous year. Revenue from sales at the Subleased Concession for the first Sublease year is estimated to be Nine Hundred & Seventy Five Thousand Dollars (\$975,000.00).

4. Build-Out. The Subleased Concession shall be delivered by the Authority to Stellar and promptly thereafter by Stellar to Brookstone in its "as is" condition, subject to the obligations of the Authority under the Prime Lease. Brookstone shall spend not less than Two Hundred Seventeen Thousand Five Hundred Dollars (\$217,500.00) or Three Hundred Dollars (\$300) per square foot to complete certain improvements to the Subleased Concession, as set forth in the Prime Lease. Any improvements to the Subleased Concession by Brookstone shall require the prior written consent of the Authority and Stellar. In constructing improvements to the Subleased Concession, Brookstone shall strictly comply with all aspects of the Prime Lease and the Sublease, all as subject to the review and approval of Stellar. Brookstone shall also be responsible for any periodic refurbishment of the Subleased Concession as required by the Prime Lease, with the minimum investment for the mid-term not to be less than \$25 psf.

Mr. Thomas Moynihan, Vice President
Brookstone Company, Inc.
May 12, 2011
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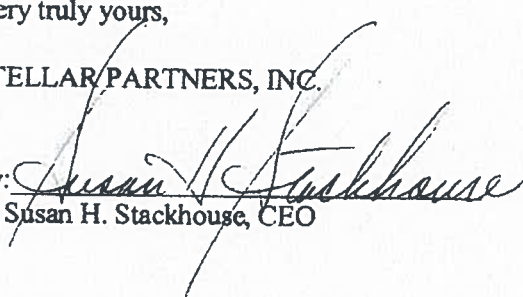
5. Compliance with Prime Lease. Brookstone shall conduct its operations at the Subleased Concession in all respects in strict compliance with Stellar's obligations under the Prime Lease and with the Sublease. This shall include, without limitation, the requirements for operation set forth in Article 8 of the Prime Lease, addressing such items as: permitted merchandise, operating hours, personnel, standards of service, sanitary condition of premises, deliveries, prices for merchandise, etc. In addition, Brookstone shall be required to comply with all requirements of federal, state and local law.

6. Assignments and Subcontracts. Any desired sale, assignment, sublease or transfer of Brookstone's rights under the Sublease shall be subject to and restricted by the provisions of Article 16 of the Prime Lease, and shall also be subject to Stellar's prior written approval, which, as to Stellar will not be unreasonably withheld.

7. Other Provisions. The parties have agreed that the terms and conditions of the proposed Sublease generally shall be consistent with the terms and conditions of the Prime Lease. The parties agree to negotiate in good faith the terms of the Sublease, as described herein, promptly after an award of the Concession to Stellar, with terms and conditions no more or less burdensome on Brookstone in any material respect than are the terms and conditions of the Prime Lease on Stellar. Only Brookstone Company, Inc. will be liable for the performance of the obligations under the Sublease and no other entity will co-sign or guaranty the Sublease. The parties agree to negotiate in good faith any other issues relating to the proposed Sublease that may come to their attention. The parties further agree that, whether or not the Sublease contemplated hereby shall be consummated, each party will bear its own expenses of counsel incurred during the course of such negotiations.

Very truly yours,

STELLAR PARTNERS, INC.

By: 
Susan H. Stackhouse, CEO

Agreed to and accepted this ___ day of May, 2011:

BROOKSTONE COMPANY, INC.

By: 
Thomas Moynihan, Vice President

RESOLUTION NO. 2013-0027

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY CONSENTING TO A SUBLEASE
AGREEMENT BETWEEN STELLAR PARTNERS,
INC. AND BROOKSTONE COMPANY, INC. AND
AUTHORIZING THE PRESIDENT/CEO TO
EXECUTE THE CONSENT AGREEMENT

WHEREAS, in August 2011, the Board awarded a non-exclusive Lease to Stellar Partners, Inc. (Stellar), for seven retail locations in Terminals 1 and 2; and

WHEREAS, the Lease provides that Stellar shall not assign the Lease or any of the obligations in whole or in part, without the express written consent of the Authority; and

WHEREAS, Authority Policy 6.01 requires that the Executive Director (President/CEO) bring all proposed subleases exceeding five years in duration to the Board for its consent; and

WHEREAS, Stellar proposes to sublease the "Brookstone" store located in Terminal 2 West in accordance with its RFP proposal; and

WHEREAS, Brookstone will operate under all the same terms and conditions as is required by the Lease; and

WHEREAS, the seven (7) year term of the sublease will be coterminous with the Lease; and

WHEREAS, staff has reviewed Brookstone's financial capacity and management ability and believes that Brookstone will be able to develop and operate the concession in accordance with the Lease.

NOW, THEREFORE, BE IT RESOLVED that the Board CONSENTS to a sublease agreement between Stellar Partners, Inc. and Brookstone Company, Inc., and AUTHORIZES the President/CEO to execute the consent agreement; and

BE IT FURTHER RESOLVED by the Board that it FINDS that this Board action is not a "project" as defined by the California Environmental Quality Act ("CEQA") (California Public Resources Code §21065); and is not a "development" as defined by the California Coastal Act (California Public Resources Code §30106).

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4TH day of April, 2013, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

**TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK**

APPROVED AS TO FORM:

**BRETON K. LOBNER
GENERAL COUNSEL**