

**Qureshi, Ann**

FOI #14146

**From:** Paton@mltw.com  
**Sent:** Wednesday, July 17, 2013 1:21 PM  
**To:** Duffy, Daniel  
**Cc:** Torres Rojas, Genara; Van Duyne, Sheree; Qureshi, Ann  
**Subject:** Freedom of Information Online Request Form

Information:

First Name: scott  
Last Name: paton  
Company: mcnamee, lochner, titus & williams  
Mailing Address 1: 677 broadway  
Mailing Address 2:  
City: albany  
State: NY  
Zip Code: 12207  
Email Address: [Paton@mltw.com](mailto:Paton@mltw.com)  
Phone: 518 447-3379  
Required copies of the records: No

List of specific record(s):

all documents that refer to or relate to the operation of any restaurants or dining establishments within Terminal C of LaGuardia Airport during Calendar year 2012, including but not limited to leases, contracts, licenses or memoranda of understanding.

**THE PORT AUTHORITY OF NY & NJ**

*FOI Administrator*

July 26, 2013

Mr. Scott Paton  
McNamee, Lochner, Titus & Williams  
677 Broadway  
Albany, NY 12207

Re: Freedom of Information Reference No. 14146

Dear Mr. Paton:

This is a response to your July 17, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for copies of all documents that refer to or relate to the operation of any restaurants or dining establishments within Terminal C of LaGuardia Airport during Calendar year 2012 including but not limited to leases, contracts, licenses or memoranda of understanding.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/14146-LPA.pdf>. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to exemption (1) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy  
FOI Administrator

Attachment

*225 Park Avenue South, 17th Floor  
New York, NY 10003  
T: 212 435 3642  
F: 212 435 7555*

**AMENDED AND RESTATED CONCESSION AGREEMENT**

**BY AND BETWEEN**

**DELTA AIR LINES, INC.**

And

**LaGuardia USA, LLC**

**Dated: April 27, 2012**

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**AMENDED AND RESTATED CONCESSION AGREEMENT**

**BY AND BETWEEN**

**DELTA AIR LINES, INC.**

And

**LaGuardia USA, LLC**

**Dated: April 27, 2012**



- D Tenant Handbook
- E Form of Monthly Report
- F As-Built Drawings
- G Intentionally Deleted
- H Intentionally Deleted
- I Acknowledgment of Opening Date
- J Letter of Credit Requirements and Forms
- K Construction Phasing Plan

## Amended and Restated Concession Agreement

This Amended and Restated Concession Agreement (this "Agreement") is made and entered into as of the 27th day of April, 2012 (the "Effective Date"), by and between Delta Air Lines, Inc. ("Delta") and LaGuardia USA, LLC, a limited liability company organized and existing under the laws of the State of New York and authorized to do business in the State of New York ("Company").

WITNESSETH:

WHEREAS, Delta and the Port Authority of New York and New Jersey (the "Lessor") have entered into Lease AG-865, effective as of March 1, 1980 (as previously or hereafter amended, supplemented or replaced from time to time, the "Terminal D Lease"), pursuant to which Delta leases from Lessor certain premises and related facilities and improvements at Terminal D of LaGuardia Airport, Queens, New York (the "Airport") and as further described on the attached Exhibit A.1 ("Terminal D");

WHEREAS, Delta (as assignee of US Airways, Inc.) and the Port Authority of New York and New Jersey (the "Lessor") are parties to that certain Lease AGA-126, originally dated as of June 2, 1989 (as previously or hereafter amended, supplemented or replaced from time to time, the "Terminal C East End Lease"), pursuant to which Delta leases from Lessor certain premises and related facilities and improvements at Terminal C of the Airport and as further described on the attached Exhibit A.2 ("Terminal C East End");

WHEREAS, Delta (as assignee of US Airways, Inc.) and the Port Authority of New York and New Jersey (the "Lessor") are parties to that certain Lease AGA-751, originally dated as of March 17, 1977 (as previously or hereafter amended, supplemented or replaced from time to time, the "Terminal C Shuttle Lease"), pursuant to which Delta leases from Lessor certain premises and related facilities and improvements at Terminal C of the Airport and as further described on the attached Exhibit A.3 (the "Terminal C Shuttle" and together with Terminal C East End, "Terminal C");

[WHEREAS, Delta and US Airways, Inc. ("Airways") are parties to that certain sublease agreement dated December 13, 2011 (as hereafter amended, supplemented or replaced from time to time, the "Airways Sublease"), pursuant to which Airways subleases from Delta certain premises and related facilities and improvements located in Terminal C East End ("Airways Premises");]

WHEREAS, Delta and Company are parties to that certain Concession Agreement dated as of August 21, 2010 (the "Terminal D Concession Agreement"), pursuant to which Delta leased to the Company certain premises located in Terminal D for the purpose of operating food and beverage concessions;

WHEREAS, Delta desires that areas in each of Terminal C and Terminal D be used as concession areas to provide various goods and services to the public;

WHEREAS, Company desires to provide and sell certain permitted goods and services from the specific locations within each of Terminal C and Terminal D, all in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, the Company and Delta wish to amend, restate and replace the Terminal D Concession Agreement with this Agreement as of the Effective Date;

NOW, THEREFORE, Delta and Company hereby mutually agree, each for itself and its successors and assigns, as follows:

**ARTICLE I: DEFINITIONS**

1.1 "Concession Manager" shall mean the person or entity, if any, selected by Delta from time to time to manage concession activities for Delta with respect to the Delta Facilities, including the Premises. If no Concession Manager is named, references to the Concession Manager shall be deemed to be references to Delta.

1.2 "Concession Site" shall mean a site within the Premises designated on Exhibit B.1 through B.8 for the conduct of Company's concession activities under this Agreement, as the same may be amended upon agreement of the parties from time to time.

1.3 "Delta Facilities" shall mean the collective reference to facilities leased to Delta by the Lessor in both Terminal C and Terminal D pursuant to the Terminal D Lease, the Terminal C East End Lease and the Terminal C Shuttle Lease.

1.4 "Enplanements" shall mean all enplaning passengers on scheduled commercial aircraft departing from the Delta Facilities or any part thereof as reported by Delta. Enplanements will include all enplaning passengers in the Delta Facilities regardless of the carrier on which they are traveling. Enplanements shall be reported separately for Terminal D and Terminal C.

1.5 "Fixed Improvements" shall mean any structural improvements made by Company pursuant to Article VIII of this Agreement (or similar provisions of any predecessor agreements), including but not limited to ceiling, wall and floor finishes, power, water and other utility conductors and light fixtures, all of which are permanently affixed to the Premises. Fixed Improvements shall also include but not be limited to any holdroom seating, tables, chairs, or counter areas purchased and installed by Company and used by passengers in the Gate Holdroom Areas. Fixed Improvements shall not include any structures installed or provided by Delta, ATMs, vending machines, amusement games or drop boxes.

1.6 "Floor Area" shall mean the floor area of the Premises (excluding the common use seating areas) measured in square feet from the exterior surface of exterior walls (and from extensions thereof in the case of openings) and from the center of interior demising partitions. Without limitation on the foregoing, second story, basement and mezzanine Concession Site space occupied by Company in the Delta Facilities will be considered Floor Area.

1.7 "Gate Holdroom Areas" shall mean those portions of the Premises located in the areas adjacent to the aircraft gates in the Delta Facilities as designated on Exhibit B.1 and B.5.

1.8 "Gross Revenues" shall mean all moneys or other consideration paid or payable on all sales of items and services (regardless of where the transaction takes place) which are delivered from operations at the Premises directly or indirectly by Company or a Suboperator and shall include all charges or other fees charged by Company, whether for cash or credit, and without deduction for discounts or thefts, and whether the same shall be paid or unpaid. There shall be allowed, when properly recorded and accounted for, as a reduction from Gross Revenues, the following items: (a) sales taxes and excise taxes where stated separately and collected from the

customer for remittance to the taxing authority; (b) the exchange of merchandise between the stores or warehouses owned by or affiliated with Company, if any, where such exchanges of goods or merchandise are made solely for the convenient operation of the business of Company and not for the purpose of consummating a sale which has theretofore been made at, in, from or upon the Premises; (c) the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by a purchaser and accepted by Company; (d) the proceeds of sale of fixtures, equipment or other items of property which are not stock in trade and not in the ordinary course of Company's business; (e) any receipts of Company which arise from its operations at the Airport under any other agreement with Delta or the Lessor and are subject to a percentage fee or percentage rent under that agreement; (f) shipping, delivery and gift wrapping charges provided at Company's actual cost by Company and documented separately by Company and such charges are merely an accommodation to customers; (g) receipts in the form of refunds from, or the value of merchandise, services, supplies or equipment returned to, vendors, shippers, suppliers or manufacturers, including volume rebates or discounts received from Company's vendors, suppliers or manufacturers; (h) customary discounts given by Company on sales of merchandise or services to its own employees, if separately stated; (i) discounts approved by Delta on sales of merchandise or services to individuals employed at the Airport, if separately stated; (j) gratuities for services performed by employees of Company which are paid by Company or its customers to such employees; (k) the sale or transfer in bulk of the inventory of Company to a purchaser of all or substantially all of the assets of Company in a transaction not in the ordinary course of Company's business; and (l) amounts paid or payable on all sales of lottery, gaming or entertainment products and services collected from the customer for remittance to a lottery authority or service provider, it being understood that Gross Revenues shall only include the commissions or the share of revenues on such sales retained by Company. Sales upon credit will be deemed cash sales, whether or not payment is actually made therefor.

1.9 "Initial Capital Investment" is defined in Section 8.2(a) of this Agreement.

1.10 "Minimum Annual Payments" shall mean the collective references to the D F&B MAP, the D Retail MAP, the C F&B MAP and the C Retail MAP, as defined in Article VII.

1.11 "Net Book Value" shall mean the original cost of a capital expenditure made by Company for Fixed Improvements (including amounts paid by the Company pursuant to Section 7.5), less accumulated amortization or depreciation (as appropriate), calculated in accordance with Article VIII as of the date on which Company is required to surrender the Premises. Company's original cost shall include reasonable and direct costs for such Fixed Improvements constructed pursuant to Article VIII.

1.12 "Payments" shall mean all charges, fees, rents, damages, expenses, contributions, assessments, payments, costs and other sums of money required to be paid by Company under this Agreement, and shall consist of all payments of Transition Rent, the Minimum Annual Payments, the Variable Payments and the Additional Payments, all as defined in Article VII of this Agreement.

1.13 "Personal Property" shall mean all furniture, inventory and other portable property furnished and used by Company in its operations hereunder.

1.14 "Premises" means, as the context dictates, the individual or collective reference to the Terminal C Food and Beverage Premises, Terminal C Retail Premises, Terminal D Food and Beverage Premises, the Terminal D Retail Premises and the Support Space Premises, as the same may be modified, expanded or contracted from time to time pursuant to this Agreement.

1.15 "Sales per Enplanement" shall mean the division of the monthly Gross Revenues by the total monthly Enplanements (as reported by Delta) from the Delta Facilities. "Sales per Enplanement (Terminal C)" shall mean the division of the monthly Gross Revenues at Terminal C by the total monthly Enplanements (as reported by Delta) from Terminal C. "Sales per Enplanement (Terminal D)" shall mean the division of the monthly Gross Revenues at Terminal D by the total monthly Enplanements (as reported by Delta) from Terminal D.

1.16 "Suboperator" shall mean any person or entity operating a facility in the Premises pursuant to an agreement with Company approved by Lessor and Delta.

1.17 "Support Space Premises" shall mean the office, storage and other support space shown on Exhibits B.4 and B.8.

1.18 "Term" shall mean the collective reference to the Terminal D Term and the Terminal C Term, each as defined in Section 3.1(a), as the same may be extended pursuant to Section 3.1(b).

1.19 "Terminal C Food and Beverage Premises" means those specific Concession Sites within Terminal C designated as Food and Beverage and Gate Holdroom Concession Sites as shown on the site plan(s) attached hereto as Exhibits B.5 through B.7, as the same may be amended or modified from time to time.

1.20 "Terminal C Retail Premises" shall mean those specific Concession Sites within Terminal C designated as Retail Concession Sites as shown on the site plan(s) attached hereto as Exhibits B.5 through B.7, as the same may be amended or modified from time to time.

1.21 "Terminal D Food and Beverage Premises" shall mean those specific Concession Sites within Terminal D designated as Food and Beverage and Gate Holdroom Concession Sites as shown on the site plan(s) attached hereto as Exhibits B.1 through B.3, as the same may be amended or modified from time to time.

1.22 "Terminal D Retail Premises" shall mean those specific Concession Sites within Terminal D designated as Retail Concession Sites as shown on the site plan(s) attached hereto as Exhibits B.1 through B.3, as the same may be amended or modified from time to time.

1.23 "Terminal Leases" shall mean the collective reference to the Terminal C East End Lease, the Terminal C Shuttle Lease and the Terminal D Lease, as the same may be amended, modified or extended from time to time.

1.24 "Trade Fixtures" shall mean all appliances, signage and any other major equipment, with a useful life in excess of three years, installed by Company in the Premises for use in its operations hereunder. Trade Fixtures may be affixed to the Premises provided their removal will not result in structural damage to the Premises. Trade Fixtures shall include without limitation ATMs, vending machines, interactive touch screens, amusement games and drop boxes. Trade Fixtures shall not include any improvements, fixtures or furnishings provided by Company for the Gate Holdroom Areas.

1.25 "Transition Rent" shall mean the collective references to the D F&B Transition Rent, the D Retail Transition Rent, the C F&B Transition Rent and the C Retail Transition Rent as defined in Article VII.

1.26 "Variable Payments" shall mean the collective references to the D F&B Variable Payments, the D Retail Variable Payments, the C F&B Variable Payments and the C Retail Variable Payments, as defined in Article VII.

1.27 "Year" shall mean for the first "Year," the period commencing on the Effective Date and ending on the next December 31, and thereafter each "Year" shall mean the twelve (12) consecutive calendar months ending on December 31.

## **ARTICLE II: PREMISES**

2.1 **Sublease of the Premises.** Delta hereby subleases the Premises to Company, and Company hereby subleases the Premises from Delta, for the Payments and upon the covenants and conditions set forth in this Agreement. The area above the floor or roof deck above the Premises ceiling, the area beneath the floor of the Premises and the exterior walls of the Premises are not demised under this Agreement, and Delta reserves the exclusive right to use those areas together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, columns and structural elements serving other parts of the Delta Facilities or the Airport in and through the Premises. This reservation in no way affects maintenance obligations imposed in this Agreement.

2.2 **Use of the Premises.** As an express and material consideration to Delta for entering into this Agreement, the Premises may be used only for operation of the concessions described herein and otherwise approved in writing by Delta and Lessor under the provisions of Article IV. Company may not use, permit or suffer the Premises, or any part thereof, to be used for any other purpose.

2.3 **Common Use Seating Areas.** For the purposes of providing customer seating in the food halls, the Premises include the common use seating areas shown on Exhibits B.1 and B.5. Design and construction of common use seating and the common use seating areas will be completed and financed by Company at Company's cost and expense. Trash removal, cleanliness, maintenance and refurbishment of the common use seating areas will be solely the responsibility of Company at Company's cost and expense.

2.4 **Gate Holdroom Areas.** The Premises include the Gate Holdroom Areas for the purposes of providing food and beverage, retail and other services in Gate Holdroom Areas. Design and construction of the seating in Gate Holdroom Areas will be completed and financed by Company at Company's cost and expense. Design of seating in the Gate Holdroom Areas shall be subject to Delta's and Lessor's approval, which in Delta's case may not be unreasonably withheld as long as the design is consistent with and in support of Delta's use of the Gate Holdroom Areas for airline operations. The Company shall make no other improvements to the Gate Holdroom Areas and shall place no other furniture, equipment, property or signs in such areas without Delta's prior approval, which may be granted or denied in Delta's sole discretion. Notwithstanding anything to the contrary contained herein, Company's rights to use and occupy the Gate Holdroom Areas shall at all time be in common with the rights of Delta to use the Gate Holdroom Areas for the uses permitted by the Terminal Leases. Trash removal from and cleaning of the seating and seating areas of the Gate Holdroom Areas will be solely the responsibility of Company at Company's cost and expense as outlined in Exhibit D. Company's use and occupancy of the Gate Holdroom Areas shall at all times be consistent with and in support of Delta's use of the Gate Holdroom Areas and adjacent gate areas for airline operations. Company agrees to refrain from conducting any activity in the Gate Holdroom Areas that could, as reasonably determined by Delta,

adversely impact Delta's operations. Delta may at any time limit or modify Company's activity in the Gate Holdroom Areas if necessary to prevent interference with Delta's operations in or from the Gate Holdroom Areas and adjacent gate areas, provided that this provision shall not be construed to prevent the use of the Gate Holdroom Areas as specifically permitted herein.

**2.5 Temporary Premises.** The Premises include the Temporary Concession Sites as shown on Exhibits B.3 and B.7 and as otherwise approved by Delta pursuant to Section 8.2(c) for the purpose of providing food and beverage, retail and other services in those portions of the Premises prior to the completion of the Permanent Concession Sites. The Company's operations within the Temporary Concession Sites shall be subject to approval by Delta in all material respects.

**2.6 Recapture Of the Premises at Delta's Option.**

(a) Delta reserves the right to recapture all or any portion or portions of the Premises prior to the end of the Term of this Agreement if Delta determines that all or such portion or portions are required for any reason as determined by Delta in Delta's sole discretion. In such event, if Company is not in default under this Agreement, Delta shall buy out or cause the buyout of Company's Fixed Improvements in the recaptured portion of the Premises at their Net Book Value. This Agreement shall terminate as to all or the portion of the Premises recaptured thirty (30) days, or sooner if Article XV applies, after the giving of written notice by Delta to Company of Delta's determination to recapture the Premises, without further obligation or liability of the parties, except for those obligations or liabilities that accrued prior to the termination date (which shall include all survived obligations under Article XV, if Company is in default under this Agreement).

(b) Delta may offer substitute space to Company after recapture of all or a portion of the Premises. Nothing in this Article II shall be deemed to require Delta to provide substitute space and any offering of substitute space will be in Delta's sole discretion. After such recapture and the addition, if any, of substitute space, if the total Floor Area of any of the Terminal C Food and Beverage Premises, Terminal C Retail Premises, Terminal D Food and Beverage Premises, or the Terminal D Retail Premises is reduced by more than fifteen (15) percent due to this recapture provision, and if Company is not in default under this Agreement, Delta shall make a proportionate adjustment to the applicable Minimum Annual Payment, effective on the date of such recapture, subject to approval of Lessor. In the event that substitute space is offered and accepted, Company shall make all necessary improvements to such space within a timeframe mutually agreed upon by both Delta and Company. All construction and installation shall be in accordance with the provisions of Article VIII. Company shall amortize/depreciate the costs of all Fixed Improvements and Trade Fixtures installed in such substitute space over the remaining portion of the Term of this Agreement, it being understood that Company shall not be entitled to any buyout of improvements to such substitute space at the end of the Term.

(c) Any buyout payment made by or on behalf of Delta under the terms of this Article II shall be paid to Company by the end of the thirtieth (30th) day following the later of (i) the date on which Company has surrendered the Premises in the condition required under this Agreement and (ii) the date on which Company has submitted the statement of Net Book Value to Delta together with reasonable supporting documentation of that statement. Within a reasonable time prior to the date such buyout payment is due (and subject to update immediately prior to the time the buyout payment is made), Delta shall be entitled to inventory and inspect all Fixed Improvements with respect to which such buyout payments are to be made, and, if any such inventory and inspection indicates that such an improvement is either missing or substantially damaged, the amount of the buyout payment allocated to such improvement shall be either

subtracted from the buyout payment (in the event the improvement is missing) or reduced by the amount required to repair the damage as reasonably determined by Delta (in the event the improvement is damaged). Simultaneously with its receipt of the buyout payment, Company shall deliver to Delta a Bill of Sale containing full warranties of title, conveying title to the Fixed Improvements contained in the Premises surrendered, free of all liens and encumbrances.

(d) In addition, Delta or its designated auditor may audit all of Company's and its agents' books and records related to the statement of Net Book Value. Company agrees to make such books and records available within ten days after Delta's request at a location within the continental United States. If such audit determines that Company has overstated Net Book Value by 5% or less, then Delta's buyout payment to Company will be reduced in proportion to the overstatement by Company. If such audit determines that Company overstated Net Book Value by more than 5%, then Delta will have no obligation to make any buyout payment to Company whatsoever, but Company shall nevertheless deliver to Delta the aforementioned Bill of Sale.

**2.8 No Expansion Option.** Company has no option to expand the Premises. Delta agrees to notify Company of new space that may become available during the Term. Delta agrees to review a proposal from Company for new space, but Delta will not be obligated to lease new space to Company.

**2.9 Support Space.** The Premises include the Support Space Premises. Delta will provide the Support Space Premises to Company without Additional Payments, except that the Company will be responsible for all utility fees and charges with respect to the Support Space Premises in accordance with Section 7.10 of this Agreement. Delta will use reasonable efforts to secure additional support space and will notify Company of the amount of space available and the Additional Payments payable once the space, if any, has been identified. In the event that Delta recaptures any Support Space Premises, there will be no Net Book Value buyout as per Section 2.6.

### **ARTICLE III: TERM**

#### **3.1 Term.**

(a) This Agreement shall be effective and binding upon the Effective Date and shall expire on August 31, 2020 with respect to the Terminal D Food and Beverage Premises and the Terminal D Retail Premises (the "Terminal D Term") and on April 30, 2022 with respect to the Terminal C Food and Beverage Premises and the Terminal C Retail Premises (the "Terminal C Term"), unless, in each case, this Agreement is terminated earlier under the provisions of this Agreement. The failure of Delta to deliver possession of all or any portion of the Premises to Company will not give rise to any claim for damages by Company against Delta or permit Company to rescind or terminate this Agreement.

(b) Delta shall have the right to extend each of the Terminal D Term and Terminal C Term for one (1) additional period of five (5) years commencing on the date immediately following the expiration of the Terminal D Term or Terminal C Term, as applicable, upon and subject to the provisions of this Section. Not later than one hundred twenty (120) days prior to the initial expiration of the Terminal D Term and Terminal C Term, as applicable, Delta shall notify Company of its election to extend or not to extend the Terminal D Term or Terminal C Term, as applicable (an "Extension Election Notice"), which election shall be at the sole discretion of Delta, provided that if Delta fails to deliver the Extension Election Notice by the date that is one hundred twenty (120) days prior to the initial expiration of the Terminal D Term

or Terminal C Term, as applicable, Company shall send Delta a notification requesting the Extension Election Notice within ten (10) days of such date. Delta shall have an additional fifteen (15) days after receipt of such request from Company to send Company the Extension Election Notice. If Delta elects to extend the Terminal D Term or Terminal C Term, the Minimum Annual Payments during such period shall escalate and be payable in accordance with Article VII as though the original Terminal D Term or Terminal C Term, as applicable, continued through the extension period. If Delta elects not to extend the Terminal D Term or Terminal C Term, or fails to deliver an Extension Election Notice with respect to the Terminal D Term or the Terminal C Term, as aforesaid, then Delta shall reimburse Company for the unamortized portion of its Initial Capital Investment in Terminal D or Terminal C, as applicable.

(c) Subject to the other provisions of this Section 3.1 and Sections 3.2 and 3.3, this Agreement shall terminate, with respect to the affected portion of the Premises, simultaneously with the termination for any reason of, or the failure by Delta to obtain a successor agreement to, any of the Terminal Leases. If any of the Terminal Leases is terminated on any account prior to the expiration of this Agreement, then this Agreement shall terminate with respect to the portion of the Premises affected thereby simultaneously with such termination unless the Lessor shall notify Company and Delta in writing at or prior to the effective date of such termination that the Lessor assumes the rights and obligations of Delta hereunder from and after such effective date of termination, it being understood that the Lessor shall have the right, but not the obligation, to be assigned and to assume all of Delta's rights and obligations under this Agreement, and further, it being acknowledged that the Lessor shall have no obligation to enter into any form of non-disturbance or recognition agreement with Company. In the event of any such assignment and assumption, Company shall be deemed to have (i) attorned to the Lessor in accordance with Section 19.2 below, (ii) recognized the Lessor as the landlord for the Premises, and (iii) released and waived any ongoing liability or obligation of Delta under this Agreement simultaneously with the Lessor's assumption of all of Delta's ongoing rights and obligations (i.e., excepting such rights to payment/claims and debts/liabilities of Delta that shall have accrued before the effective date of such assumption).

### **3.2 Expiration and Replacement of the Terminal Leases.**

(a) Delta has informed Company and Company understands that each of the Terminal Leases is scheduled currently to expire as of December 31, 2015. Company further understands that, although Delta intends to enter into successor agreements with the Lessor for Delta's continued occupancy and operation in each of the Delta Facilities, Delta cannot and does not guarantee:

(i) this Agreement will remain in effect for those portions of the Premises within each of the Delta Facilities for the entire Term of this Agreement;

(ii) that Delta and the Lessor will enter into a successor agreement for Delta's continued occupancy and operations in each of the Delta Facilities; or

(iii) if Delta and the Lessor enter into successor agreements for each of the Delta Facilities, that Delta will retain the right to sublease space within the Delta Facilities for concession operations.

(b) Notwithstanding anything to the contrary contained herein, so long as any of the Terminal Leases remains in effect and/or Delta remains in possession of any of the Delta

Facilities on a holdover basis after expiration, and Company is not otherwise in default of this Agreement, Delta agrees to permit Company to occupy and conduct concession operations in accordance with the terms of this Agreement in those portions of the Premises within the Delta Facilities that Delta continues to occupy; provided however, that Company's occupancy is subject to the consent of the Lessor, which consent, if given, may be revoked by the Lessor, in its sole discretion, at any time during the Term hereof.

(c) In the event Delta and the Lessor: (i) enter into a successor agreement for Delta's continued occupancy and operation in any of the Delta Facilities, (ii) this Agreement has not been terminated with regard to those portions of the Premises within the Delta Facilities to which the successor agreement applies, (iii) such successor agreement grants Delta the right to sublease space for concession operations within the Delta Facilities to which the successor agreement applies, and (iv) the Lessor has given its written consent to Company's occupancy and operations within such of the Delta Facilities under said successor agreement, then Delta and Company agree that this Agreement shall not terminate with regard to those portions of the Premises within such of the Delta Facilities but remain in effect in all terms and conditions.

**3.3 Lessor Recapture.** In the event the Lessor for any reason (including for any reason related to expiration of any of the Terminal Leases or any other termination of Delta's rights to occupy any of the Delta Facilities) recaptures any portion of the Premises during the Term of this Agreement (such Premises being the "Recaptured Premises"), this Agreement shall terminate and the parties shall be relieved of their obligations hereunder with respect to the Recaptured Premises following the date of such recapture, except that (i) unless Company is permitted by the Lessor or its lessee to continue to operate concessions in the Recaptured Premises on substantially similar terms as such concessions are operated pursuant to this Agreement, Delta shall reimburse Company for the unamortized portion of its Initial Capital Investment in the Recaptured Premises, and (ii) the Minimum Annual Payments related to the Recaptured Premises shall terminate or, if the Recaptured Premises are not entire components of the Premises (e.g., the Terminal D Retail Premises), the D F & B MAP, D Retail MAP, C F & B MAP and C Retail MAP, as applicable, shall be reduced proportionately by the ratio of Gross Revenue related to the Recaptured Premises during the twelve (12) full calendar months immediately preceding said date of termination to the total Gross Revenue during the same period. The parties shall remain liable for their respective obligations hereunder with respect to the Recaptured Premises prior to the recapture, and the remaining Premises prior to and following such recapture.

**3.4 Holding Over.** In the event Company shall, with the written consent of Lessor and Delta, hold over and remain in possession of any of the Premises after the expiration or earlier termination of the Term of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall only create a month-to-month lease on the same Payments and other terms, conditions and covenants contained in this Agreement. If such holding over is without the written consent of Delta and Lessor, the Minimum Annual Payment and the Variable Payments per month shall be double those that would apply if such written consent had been given, and Company shall be in default under this Agreement. Any month-to-month tenancy may be terminated by Delta or Company by giving 30 days' notice of termination to the other party at any time.

## **ARTICLE IV: USES AND PRIVILEGES**

4.1 **Authorized Uses.** Company is obligated to design, construct, operate and manage its concessions on the Premises in accordance with the terms and conditions of this Agreement, including without limitation the use descriptions attached hereto as Exhibit C. Company shall neither use nor permit the Premises to be used for any purpose other than as hereinabove set forth except with the prior written consent of Delta, which consent may be withheld by Delta in Delta's sole discretion. Company shall neither use nor permit the Premises to be used in violation of any applicable present or future law, ordinance, rule or regulation.

4.2 **Non-exclusive Concession.** Company acknowledges that Company does not have any exclusive right whatsoever with respect to the conduct of its business from the Premises and agrees that Delta and Lessor may enter into agreements for businesses to be conducted in other parts of the Delta Facilities or elsewhere in the Airport that are similar to or the same as the businesses conducted by Company under this Agreement. Without limitation of the foregoing, Delta and Lessor are free to grant rights to other parties in other locations in the Delta Facilities and the Airport to sell the same goods and services sold by Company in the Premises. If Delta enters into agreements for business to be conducted in the Delta Facilities similar to or the same as those conducted by Company under this Agreement that exceed 10% of the Floor Area of any of the Terminal C Food and Beverage Premises, Terminal C Retail Premises, Terminal D Food and Beverage Premises, or the Terminal D Retail Premises then, subject to approval by the Lessor, Delta will reduce the applicable Minimum Annual Payment(s) by a percentage the numerator of which will be the Floor Area of the concessions sites described in the competing agreements and the denominator of which will be the total Floor Area of the applicable Premises. In addition, Delta agrees that it will not enter into any competing agreement for any single concession site within the Delta Facilities larger than 1000 square feet.

4.3 **Ingress and Egress.** Company has the non-exclusive right of ingress to and egress from its Premises, subject to any rules or regulations which may have been established or may be established in the future by Lessor or Delta. Such rights of ingress and egress shall apply to Company's employees, guests, patrons, invitees, suppliers and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material, machinery and other property. In connection with any such ingress or egress, Company shall not, and shall not permit others, to obstruct or otherwise interfere with any airline's or other tenant's operations or use of the Delta Facilities or the Airport. Company acknowledges and agrees that Delta has made no representations, warranties or covenants to Company regarding the design, construction, pedestrian traffic, access or visibility of the Delta Facilities or the Premises. Company further acknowledges and agrees that from time to time the Delta Facilities will undergo construction and renovation projects that will involve barricading, materials storage, noise, the presence of workmen and equipment, rearrangement, utility interruptions and other inconveniences typically associated with construction and renovation. Company waives any claim or defense it may have against Delta based upon interruption of or interference with Company's conduct of business or inconvenience to its customers caused by such construction and renovation. At any time and from time to time, Delta may, without the consent of Company, and without affecting Company's obligations under this Agreement, at Delta's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion of the Delta Facilities, including without limitation concourses, piers, boarding areas, retail areas and security areas, (b) build additional stories above or below the Delta Facilities, (c) relocate public entrances to the Premises, and (d) expand or contract the Delta Facilities.

#### 4.4 Restrictions on Use and Operations.

(a) No use, other than such uses as may be approved in advance and in writing by Delta, may be made of the Premises or permitted to be made on the Premises, nor acts done, that will increase the existing rate of insurance upon the Delta Facilities or upon any other building in the Airport or cause the cancellation of any insurance policy covering the Delta Facilities, or any part thereof, nor may Company sell, or permit to be kept, used or sold, in or about the Premises, any article that is prohibited by the standard Basic Form property insurance policies. Additionally, Company shall, upon demand, pay to Delta any increase in the premiums for property insurance for the Premises and the Delta Facilities resulting to the overall cost on the building or buildings covered by such policies because of any special conditions relating to Company's operations, and which cause the premium to be higher than that applicable to the least hazardous occupancy for commercial use. The judgment of Delta's insurance carrier or agent is conclusive as to the amount involved.

(b) Company may not use nor suffer the use of the Premises or any portion of the Premises for any of the following: (i) any business or purpose that is not permitted under this Agreement, (ii) the conduct of any activity which violates applicable laws and regulations, (iii) the conduct of any offensive, noisy or dangerous trade, business, manufacturing activity or occupation; (iv) creating or maintaining any nuisance, (v) any use not compatible with the operation of a first-class international airport, (vi) any conduct which unreasonably disturbs, impairs or interferes with the use and enjoyment of the other tenants and occupants of the Delta Facilities or the Airport, (vii) any auction, distress, fire, bankruptcy, liquidation, relocation, closing or "going out of business" sales, (viii) the sale or rental of sexually explicit materials, (ix) the sale of drug paraphernalia, (x) the operation of an outlet or second-hand store, (xi) lodging, dwelling or sleeping purposes, (xii) any use that tends to injure the reputation or appearance of the Delta Facilities, the Airport or Delta, and (xiii) unless specifically provided for in this Agreement or otherwise approved in writing by Delta and Lessor, pinball machines, other mechanical devices or equipment for amusement or recreation, vending machines, pay telephones and other coin or token operated devices.

(c) Company may not place any loads upon the floors, walls or any other portion of the Premises that may damage or impair the structural portions of the Premises or the Delta Facilities. Delta reserves the right to prescribe the weight, movement and position of all safes and heavy installations that Company wishes to place in the Premises so as to properly distribute the weight thereof.

(d) Company may not obstruct the sidewalks, passageways, stairways, driveways, approachways, walks, roadways, exits and entries in, to, from and through the common areas and all other parts of the Delta Facilities.

(e) Except for approved signs and the Company's use of iPads (or similar next generation devices), the Company may not use any advertising or promotional medium that may be seen, heard or otherwise experienced outside of the Premises (such as searchlights, barkers or loudspeakers). Company may not distribute handbills or circulars to patrons of the Airport or to cars in the parking lots nor engage in any similar form of direct advertising in the Airport. Without first obtaining Delta's written approval, Company may not use or permit the Airport concourses or other common areas to be used for the display of merchandise, news racks or for other Company promotional occupation, undertaking or purpose. iPads (or similar next generation devices) located in the Premises may be used for advertising or promoting or selling goods or services from the Concession Sites, all within guidelines approved by Delta and Lessor. Use of iPads, similar next generation devices, or any other means or method of placing or allowing third party

advertising at the Premises that is not related to ordering food, beverages and goods from the Concession Sites will be subject to approval by Delta and Lessor in their sole discretion.

(f) Company may not, without the prior written consent of Delta, refer to Delta or the Airport for any purpose other than to specify the address of the business conducted by Company in the Premises, nor may Company do or permit anything in connection with Company's business or advertising which in the reasonable judgment of Delta may reflect unfavorably on Delta or the Airport, or confuse or mislead the public as to the relationship between Delta and Company.

(g) Company may not vacate or abandon the Premises or any portion thereof at any time during the Term of this Agreement.

**4.5 Disputes over Concession Rights.** Should a conflict arise between Company and other concession operators at the Airport regarding the scope of concession privileges, the decision of Delta shall be final.

**4.6 Additional Uses.** In the event Company wishes to offer at an existing Concession Site goods and services of a type, nature or cuisine that does not fit with the concept identified by Company and approved by Delta for such Concession Site as set forth on Exhibit C, or to establish a new Concession Site not designated on Exhibit B, Company shall prepare and submit to Delta, for Delta's approval, a proposed use clause that specifically identifies every type of item permitted to be sold from that Concession Site. If and when such a use clause has been approved by Delta, that use clause shall be deemed incorporated into this Agreement as part of Exhibit C and such clause shall be the applicable use clause for that Concession Site. With respect to each Concession Site, Company may not sell any item of a type, nature, or cuisine that does not fit within the concept identified by the Company and approved by Delta for such Concession Site as set forth in Exhibit C for that Concession Site without Delta's and Lessor's consent. If Delta determines, in its sole discretion, that any item is no longer authorized to be sold in the Delta Facilities, said item shall be treated as an Unauthorized Item as per Section 5.6 (c) below.

**4.7 Trade Names.** Company shall operate its concession under the trade names listed in Exhibit C (collectively the "Required Concession Trade Names"). Company may not operate any concession in the Premises under any trade name other than the trade names included in the Required Concession Trade Names except with the written consent of Delta, which consent shall not be unreasonably withheld or delayed. Company represents and warrants that, to its knowledge and upon reasonable investigation, Company has the right pursuant to franchise or license agreement or otherwise to operate a concession under the Required Concession Trade Names, including the right to use those trade names, construct a concession using the trade dress associated with those trade names and to operate a business in the manner and selling the goods and services associated with those trade names. Company shall indemnify, defend, protect and hold Delta and Lessor harmless from any loss, damage, claim or injury arising out of or connected to a breach of this representation and warranty.

## **ARTICLE V: OPERATIONAL STANDARDS**

**5.1 Concession Operations.** Company shall, at its cost, furnish prompt, courteous and efficient service and shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents and employees. Company shall employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while on or about the Premises, shall be clean, neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification, in such

instances as are appropriate. No personnel employed by Company, while on or about the Premises, shall use improper language, act in a loud, boisterous or otherwise improper way or be permitted to solicit business in an inappropriate manner.

**5.2 Tenant Handbook.** Company and its employees, agents, representatives, suppliers, contractors and invitees shall at all times comply with the requirements contained in the Tenant Handbook attached hereto as Exhibit D (the "Tenant Handbook"). Company shall maintain, repair and clean the Premises and otherwise operate and staff its concessions according to the standards set forth in the Tenant Handbook.

**5.3 Determination of Compliance.** Delta and its Concession Manager shall each have the right to determine Company's compliance with all operational standards including, but not necessarily limited to, those included in this Article V and in the Tenant Handbook. At any time and from time to time, Delta may conduct an audit of Company's operations at the Premises to confirm that Company is conducting its business and operating in the Premises in full compliance with the provisions of this Agreement. Company shall, at its sole cost and expense, cooperate with such audit. If the audit determines that Company is not in full compliance with the provisions of this Agreement, without limitation on Delta's other rights and remedies under this Agreement, Company shall reimburse Delta for all costs and expenses incurred by Delta in connection with the audit. In addition, Company shall promptly remedy any noncompliance identified by the audit.

**5.4 Pricing of Items.**

(a) It is understood that Lessor has implemented a street pricing policy under which Company may not charge prices for any merchandise items at the Premises exceeding the street pricing policy set forth herein.

(b) Prices charged for merchandise, shall not be higher than the average price charged for the same or similar items in accordance with a street pricing approach whereby Company will select and Delta, Lessor and Company will mutually agree in writing on three specific off-Airport locations within the New York metropolitan area for each Concession Site which shall be used as specific pricing comparison locations. The off-Airport businesses selected to determine street pricing shall, if possible, be operated under the same trade name as the Concession Site in question. If at any time Delta determines that the prices charged by Company exceed the average street price charged for the same or similar items by three percent (3%) or more, then upon notice from Delta, Company shall immediately reduce its prices to coincide with the average street price charged for the same or similar items. If Company fails to reduce its prices as required within forty-eight (48) hours after notice from Delta, then Company shall pay Delta \$500.00 per day or portion thereof that Company charges prices in excess of the average street price charged for the same or similar items.

(c) For purposes of this pricing policy, the price comparisons of off-Airport locations shall not include any short-term promotional pricing of said off-Airport locations. Further, the term "same or similar items" as used herein shall not include promotional items sold for ninety (90) days or less from off-Airport locations.

(d) Company shall submit to Delta, from time to time and within thirty (30) days of the end of each Year, an annual pricing report, in a format satisfactory to Delta, demonstrating compliance with the above pricing policy.

**5.5 Substitution of Concepts.** Provided that the numbers of enplaning passengers in the applicable portion of Delta Facilities for the immediately preceding three-month period are not less than the minimum enplanement figures set forth in Section 7.7, and the Concession Site has not otherwise been affected by reductions in enplanements within the vicinity of the Concession Site, then, at any time after the fourth full Year, Delta may, in Delta's sole discretion, require Company to re-concept any Concession Site whose Gross Revenues for the fourth Year or any subsequent Year are less than 75% of the highest reported annual Gross Revenues for that Concession Site for the first, second or third Years. If Delta exercises its right to require the re-concepting of Concession Site(s), and subject to mutual agreement as to the new concept, Company shall, within 180 days after Delta's notice, design, construct and open for business in those Concession Site(s) under trade name(s) approved by Delta, such approval not to be unreasonably withheld. In the event Company and Delta cannot agree upon such re-concepting, Company shall have the option of terminating its operations in the affected spaces upon 30 days written notice to Delta. All alterations performed in connection with such re-concepting shall comply with the requirements of the Tenant Handbook. For purposes of this Section, the first full Year for the Crust, Bar Brace and Bisoux Market Concession Sites in Terminal D is calendar year 2012, and the first full Year for the Bisoux Concession Site in Terminal D is calendar year 2013.

**5.6 Adding Items.**

(a) Delta, with Lessor's authorization, may request the addition of items to Company's inventory that are in public demand and Company shall provide such item unless doing so would reasonably be expected to materially reduce Gross Revenues.

(b) Company may, from time to time, modify, add or delete menu items or offerings of items for sale at any Concession Site provided that type, quality, nature and, for food and beverages items, the cuisine and portion sizes of any modified, new or replacement item or offering fits, in the reasonable judgment of Delta, within the concept identified by the Company and approved by Delta for such Concession Site as set forth on Exhibit C. In determining whether a modified or new item fits within the specific concept, factors such as the overall theme, look and feel of the concept and local, regional and non-national versus national or franchised branding may be considered. At least once per quarter, Company shall provide Delta with any changes to menus and product offering lists including pricing occurring since the previous update. If Delta determines that any item is no longer authorized to be sold in the Delta Facilities, said item shall be treated as an Unauthorized Item as per section (c) below. Company shall comply at all times with the street pricing requirements of Section 5.4 with respect to any new or replacement menu items or offerings.

(c) If (i) Company sells any item in a Concession Site that, in the reasonable judgment of Delta, does not fit within the concept identified by the Company and approved by Delta for such Concession Site as set forth on Exhibit C and not otherwise approved by Delta and Lessor (an "Unauthorized Item"), and (ii) Company has not ceased the sale of said Unauthorized Item within 48 hours of its receipt of notice, then, without limitation on Delta's other remedies, Company shall pay \$500.00 (50% to Lessor and 50% to Delta) per day that Unauthorized Items are sold (or are available for sale) by Company (the "UI Payment").

(d) Company's payment to Delta and Lessor of such UI Payment shall not relieve Company of its obligations to make other Payments required under this Agreement, any liability for damages or indemnification arising out of or related to Company's breach of this Agreement by selling an Unauthorized Item or any other obligations of Company under this Agreement or

applicable law. The sale of any Unauthorized Item (regardless of whether Company pays the UI Payment required herein) constitutes an event of default for which Delta shall have the right to terminate this Agreement pursuant to Article XV hereof and such other rights or remedies as Delta may exercise pursuant to or as permitted by this Agreement.

**5.7 Marketing.** Company shall maintain, develop, and promote business conducted by it in the Premises. All marketing promotions are subject to the prior written approval of Delta and the Concession Manager. Company agrees to actively participate in an airport-wide program to promote the fact that "street prices" are being charged at the Delta Facilities. Delta, at Delta's sole discretion, may elect to conduct, or cause to be conducted, an advertising, promotional and public relations program for the general purpose of promoting the Delta Facilities and the retail concession business conducted in the Delta Facilities. If Delta elects to do so, Delta will determine in its sole discretion the composition and manner of implementation of that program and provide Company with a description of the promotional activities to be undertaken. Company shall participate in promotions, advertising and public relations, and cause its concession manager to attend promotional program meetings. If Delta elects to conduct an advertising, promotional and public relations program as described herein, upon notice from Delta, Company shall pay to Delta a reasonable promotional expense fee agreed to by the parties as a contribution toward the cost of the promotional program. Company shall not be responsible for any retroactive promotional expense fee for any period prior to Delta's notification in writing of its intent to collect a promotional expense fee.

**5.8 Books and Records for Concessions.**

(a) In addition to the requirements of Article VII, the books and source documents to be kept by Company shall include records of inventories and receipts of merchandise, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Premises by Company and other persons or entities conducting business in or from the Premises. Pertinent original sales records include: (i) cash register tapes, including tapes from temporary registers, (ii) serially pre-numbered sales slips, (iii) the original records of all mail, telephone, electronic, and internet orders at and to the Premises, (iv) settlement report sheets of transactions with subtenants, concessionaires, licensees and assignees, (v) original records indicating that merchandise returned by customers was purchased at the Premises by such customers, (vi) memorandum receipts or other records of merchandise taken out on approval, (vii) detailed original records or any exclusions or deductions from Gross Revenues, (viii) sales tax records, and (ix) all other sales records, if any, that would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Company's Gross Revenues. Company shall retain all of the required books, source documents and records of Gross Revenues with respect to each Year for at least four years after the expiration of the Year or, in the event of a dispute between Delta and Company regarding the amount of Gross Revenues, for a Year, until the dispute is resolved. Company shall keep the required books, source documents and records of Gross Revenues available for inspection by Delta and its agents and employees at the Premises or at another location within the continental United States at all times during regular business hours.

(b) Company shall record at the time of each sale or other transaction, in the presence of the customer, all receipts from such sale or other transaction, whether for cash, credit or otherwise, in a cash register or cash registers (including computerized cash registers or other similar electronic devices) serviced by an established agency approved by Delta. Mechanical cash register(s) shall have a non-resettable cumulative total, a detail audit tape, a

transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit cumulative capacity or greater, as determined by Delta based on the type of business, with a four-digit overrun counter. Company shall furnish to Delta a statement from an established agency that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by Delta. If Company uses computerized cash registers or other similar electronic devices, that system shall accurately record all sales from the Premises and all off-site sales related to the Delta Facilities including but not limited to electronic sales, phone sales and internet sales and be no more subject to tampering than mechanical cash register(s). The cash register(s) (including computerized cash registers or other similar electronic devices) shall also have all other features as normally required in the restaurant industry. Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used in the Premises, or off-site, Company shall immediately furnish to Delta notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair agency employed by Company to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used by Company) is hereby authorized and directed to disclose and furnish to Delta or its auditors any information obtained by the agency in the course of making such repair or replacement pertaining to said cash register (including computerized cash registers or other similar electronic devices if used by Company). Company shall issue to each customer a receipt or sales slip for each transaction, which transaction shall be recorded either on serially numbered sales slips or cash register tapes. Delta's agents have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers or other similar electronic devices if used by Company) and to inspect for compliance with this Section.

**5.9 Exhaust System Maintenance.** Company shall be responsible for the proper maintenance of the kitchen exhaust system. Company shall contract the services of a factory authorized service agency to maintain the system. Company shall be responsible for cleaning the air ducts and the kitchen exhaust system in the food preparation areas quarterly under Delta supervision using a contractor and contract approved by Delta. A copy of work orders will be provided to Delta and Delta's building management group.

**5.10 Drain and Greasetrap Maintenance.** Company shall maintain all drains, including greasetraps in the Premises. All drains shall have a PM (preventive maintenance) program maintained by a qualified contractor.

**5.11 HVAC Maintenance.**

(a) Without limitation upon Company's other obligations as stated in Article IX, Company shall, at Company's expense, maintain a service contract for the regular maintenance of any Company-installed HVAC equipment, if any, that exclusively serves the Premises with a service company approved by Delta and Lessor. Company shall provide evidence of that service contract to Delta within ten days of Delta's request.

(b) Notwithstanding the provisions of the immediately preceding Subsection, Delta may elect at any time upon written notice to Company to perform the maintenance, repair or replacement of the HVAC equipment exclusively serving the Premises at Company's expense. If Delta makes that election, then Company shall pay the full cost of the maintenance contract for the HVAC equipment within 30 days of receipt of a demand from Delta, as well as for the costs of repair and replacements of that equipment as necessary, in the reasonable

judgment of Delta. Delta may, at its option, elect to have the HVAC equipment exclusively serving the Premises maintained in common with other equipment. If Delta makes that election, then Company shall pay its share of those maintenance costs. Delta will determine Company's share in a reasonable manner based upon the relative tonnage serving the Premises, compared to the total tonnage under contract, or some other reasonable means of allocation selected by Delta. The method of allocation selected by Delta may provide that cost of repairs and replacements which are not covered without additional charge by the service contract are payable by Company to Delta, and without allocation. Delta's good faith judgment as to the allocation of the charges described in this Section is conclusive. Included in the charges to be allocated to Company shall be the following, without limitation: the maintenance contract upon the HVAC, the additional cost of any warranty or insurance upon the major operating parts of the system, repairs and replacements not covered by the maintenance service contract.

5.12 **Concession Management.** All concession operations shall be supervised at all times. Company shall keep Delta informed in writing of the identity of its managers and any qualified subordinates who may act in the managers' absence. The managers or qualified subordinates shall be available by telephone or electronically during Company's business hours. Said managers shall have full authority to make day-to-day business decisions on behalf of Company and shall be responsible for ordering and receiving supplies, maintaining supplies and supervising personnel employed in the business of Company and coordinate all concession activities with Delta.

5.13 **Annual Plan.** Upon Delta's request (but no more frequently than once per Year), Company shall prepare and submit operating, staffing, quality assurance and marketing plans to Delta for its review and approval. These plans shall include details of service standards, staffing numbers, staff training, operating hours, quality assurance programs, seasonal promotions, refurbishment ideas and any other items that Delta may reasonably require, including the Company's forecasts of Gross Revenue.

5.14 **Increase of Business.** Company shall not divest, cause, allow or permit to be diverted any business from the Premises and shall take all reasonable steps to develop, maintain and increase the business conducted by it under this Agreement. Further, Company shall actively operate its concession so as best to serve public needs. Company shall provide service for passengers of all ages in the Premises every day of the Term hereof, without exception.

5.15 **Access.** Company shall not interfere with the effectiveness or accessibility of utility, heating, ventilating or air-conditioning systems or portions thereof on the Premises or elsewhere on the Airport, nor do anything which may interfere with free access and passage in the Premises or the public areas adjacent thereto, or in the streets or sidewalks adjoining the Delta Facilities, or hinder police, fire fighting or other emergency personnel in the discharge of their duties.

5.16 **Hours of Operation.**

(a) Delta shall determine in its sole discretion the hours of operation of each Concession Site. Company shall continuously conduct and carry on Company's business at each Concession Site and keep the same adequately stocked with inventory and operated with sufficient personnel to conduct its business in accordance with good business practices.

(b) IF COMPANY DOES NOT OPERATE ITS BUSINESS AS REQUIRED UNDER THE IMMEDIATELY PRECEDING SUBSECTION, THEN COMPANY SHALL PAY TO DELTA FOR EACH DAY COMPANY DOES NOT SO OPERATE, AN AMOUNT EQUAL TO

TWICE THE MONTHLY PAYMENT OF THE MINIMUM ANNUAL PAYMENT REQUIRED TO BE PAID UNDER THE TERMS OF THIS AGREEMENT DIVIDED BY THIRTY (30) TO PRODUCE DAILY LIQUIDATED DAMAGES, OR IF NO MINIMUM ANNUAL PAYMENT IS THEN PAYABLE, THEN AN AMOUNT EQUAL TO TWICE THE AVERAGE DAILY VARIABLE PAYMENTS PAYABLE BY COMPANY FOR THE IMMEDIATELY PRECEDING THREE MONTHS. SUCH PAYMENT IS IN ADDITION TO THE OTHER PAYMENTS PROVIDED FOR IN THIS AGREEMENT AND WILL COMPENSATE DELTA FOR THE LOSS OF ANY VARIABLE PAYMENTS AND THE IMPACT UPON THE REMAINDER OF THE DELTA FACILITIES CAUSED BY COMPANY'S FAILURE TO SO OPERATE. THE PARTIES AGREE THAT THIS AMOUNT REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES DELTA WILL SUFFER BY REASON OF THIS BREACH AND A PRECISE CALCULATION IS DIFFICULT TO ASCERTAIN AT THIS TIME. DELTA'S REMEDIES STATED IN THIS SUBSECTION ARE CUMULATIVE WITH ALL OTHER REMEDIES AVAILABLE TO DELTA FOR BREACH OF THIS AGREEMENT BY COMPANY.

DELTA \_\_\_\_\_ COMPANY \_\_\_\_\_

5.17 **Quality of Merchandise.** All items offered for sale by Company shall be of high quality as determined solely by Delta. If Delta determines that any item offered for sale by Company is of insufficient quality, Company shall either 1) immediately improve the quality of said item or, 2) immediately discontinue sale of said item, as requested by Delta.

5.18 **Removal of Garbage and Refuse.** Delta will permit Company to utilize the dumpsters (which if Delta directs may be shared with other Airport occupants) designated by Delta in writing. Company's staff shall complete a dumpster user training session provided by Delta in order to ensure the proper procedures are followed. The fee for use of the dumpster or dumpsters shall be included in the utility fee in Section 7.10. Company is responsible to ensure the clean, orderly and safe operation of the dumpster by their employees and to ensure that the dumpster area is kept in a clean, orderly and safe condition at all times. Refuse, garbage, trash and debris shall be retained within the dumpster at all times. In the event that Company's employees, officers or representatives fail to maintain the cleanliness of the dumpster area consistent with the standards contained herein, Delta shall have the right but not the obligation to perform any and all things which Company has failed to do after ten (10) days' written notice to act, including cleaning of the dumpster area. The cost of all labor, materials and other charges required for performance of such work, plus fifteen percent (15%) thereof for administrative overhead, will be paid by Company to Delta within ten (10) days following receipt of invoice by Company. Company may not place or leave, or permit to be placed or left, any garbage, debris or refuse in or upon any part of the common areas or sidewalks and ways adjacent to the Premises.

5.19 **Deliveries.** Company shall cause all deliveries and dispatches of merchandise, supplies, fixtures, equipment and furniture to be made and conveyed to or from the Premises by means and during hours established by Delta in Delta's sole discretion. Delta has no responsibility regarding the delivery or dispatch of Company's merchandise, supplies, fixtures, equipment and furniture.

5.20 **Display Windows.** Company shall keep all display windows of the Premises suitably illuminated during all required hours of operation.

## **ARTICLE VI: AIRPORT FACILITIES**

6.1 **General.** Company acknowledges that the operational requirements of the Delta Facilities as airport facilities, including without limitation security requirements, are of paramount importance. Company acknowledges and agrees that it shall conduct its business in a manner that does not conflict with the operational requirements of the Delta Facilities as airport facilities and that fully accommodates those requirements. Company waives all claims for any lost profits, increased operating expenses or any other cost, expense, loss or damage arising out of or connected to the operation of Delta or other airline users of the Delta Facilities or the Airport.

6.2 **Rules and Regulations.** Without limiting other requirements of this Agreement, Company covenants and agrees to observe and obey all applicable rules and regulations promulgated by either or both Lessor and Delta applicable to the construction, conduct or activities of Company or its agents, representatives, suppliers, contractors or invitees at the Delta Facilities.

6.3 **Terminal Leases and Lessor Permit.** Company acknowledges that Company has received a complete copy of each of the Terminal Leases. Company recognizes that this Agreement is subject in all respects to the approval of Lessor, to the terms of any permit and/or consent agreement required in connection herewith by Lessor and to the Terminal Leases (which Company shall comply with at all times as if it were a lessee thereunder). Should Lessor fail to consent to this Agreement or should Lessor withdraw its consent once given, this Agreement shall terminate at Lessor's or Delta's election on the date specified by the terminating party in a written notice to Company, and Company shall have no claims against Lessor or Delta arising from such termination except for reimbursement by Delta for the unamortized portion of the Company's Initial Capital Investment. The provisions of this Agreement are at all times subject and subordinate to the Terminal Leases, including Lessor termination options affecting all or part of the Premises. The rights of Delta in the Premises are those granted to it by the Terminal Leases, and no greater rights are granted or intended to be granted to Company than Delta has power thereunder to grant. Company agrees that it will not take any action or suffer any action to be taken on the Premises or at the Airport by it, its employees, agents, representatives, suppliers, contractors or invitees which is prohibited by the provisions of said permit of Lessor or the Terminal Leases. Restrictions, obligations and other requirements of this Agreement are in addition to those in the Terminal Leases, which are made applicable by this provision, and are agreed to be cumulative. In the event there is an irreconcilable conflict between the provisions of this Agreement and any of the Terminal Leases, the provisions of the Terminal Leases shall control. If any provisions of this Agreement or the Terminal Leases are inconsistent with any such permit and/or consent agreement required by Lessor in connection herewith, the terms and conditions of such permit and/or consent agreement shall control.

6.4 **Zoning and Restrictions.** The parties agree that this Agreement is subject to (a) the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, under leases, ground leases, rights of way and any other matters or documents of record or of which Company has knowledge or should have knowledge or a duty of inquiry (collectively the "Restrictions"); and (b) the effect of any zoning laws of the city, county and state where the Delta Facilities are located (the "Zoning"). Company agrees that (i) as to its leasehold interest, it (and all persons in possession or holding under it) will conform to and will not violate the terms of the Restrictions and Zoning, and (ii) this Agreement is subject to the Zoning, the Restrictions and any amendments or modifications thereto.

**ARTICLE VII: RENT, PAYMENTS, REPORTS AND ACCOUNTABILITY**

**7.1 Rent – Terminal D Food and Beverage.**

(a) [Intentionally Deleted]

(b) Minimum Annual Payment. The initial minimum annual payment for the Terminal D Food and Beverage Premises (the “D F&B Minimum Annual Payment” or “D F&B MAP”) commenced on February 20, 2012, the “D F&B MAP Start Date”). The D F&B MAP payable under this Agreement shall be one million eight hundred fifty thousand dollars (\$1,850,000), subject, however, to any adjustments provided for below and elsewhere in this Agreement. Each Year during the Term, beginning with the Year after the D F&B MAP Start Date (*i.e.*, the Year beginning January 1, 2013), the D F&B MAP shall equal the greater of (i) \$1,850,000 or (ii) 90% of the total D F&B MAP and D F&B Variable Payments (defined below) payable by Company under this Agreement with respect to the prior Year. The D F&B MAP for each Year shall be payable in 12 equal monthly installments, except that the D F&F MAP for any partial Year shall be prorated based on the number of days that the D F&F MAP is in effect during such Year. The D F&B MAP for a partial month will be prorated based on a 30 day month.

(c) Variable Payment. In addition to the D F&B MAP, commencing on the D F&B MAP Start Date, Company shall make a payment (the “D F&B Variable Payment”) each month equal to the positive difference, if any, after deducting the monthly D F&B MAP from the total percentage rent figure calculated by adding together the percentage rent figure on each of the four increments of monthly Sales Per Enplanement (Terminal D) identified in the schedule below. For each increment of monthly Sales Per Enplanement (Terminal D), the percentage rent figure shall be the total monthly Terminal D Enplanements multiplied by the monthly Sales Per Enplanement (Terminal D) increment multiplied by the corresponding percent from Table 7.1(c) below. For example, with monthly Terminal D Enplanements of 243,333 and total monthly Sales Per Enplanement (Terminal D) of \$9.07 the Total Monthly Rent would be \$195,555. See example below.

(243,333 x \$5.50 =	\$1,338,333	\$1,338,333 X 9.25%	= \$123,796
(243,333 x \$1.00 =	\$243,333	\$243,333 X 9%	= \$21,900
(243,333 x \$2.50 =	\$608,333	\$608,333 X 8%	= \$48,667
(243,333 x \$0.07 =	\$17,033	\$17,033 X 7%	= \$1,192
	\$2,207,032		\$195,555

Monthly Sales Per Enplanement (Terminal D)	Monthly Terminal D Enplanements				
	≤ 233,333	233,334 – 250,000	250,001 – 266,667	266,668 – 283,333	≥ 283,334
≤ \$5.50	9%	9.25%	9.45%	9.55%	9.65%
\$5.51-\$6.50	9%	9%	9.2%	9.3%	9.4%
\$6.51-\$9.00	9%	8%	8.2%	8.3%	8.4%
≥\$9.01	9%	7%	7.2%	7.3%	7.4%

Each Year during the Term, beginning with the Year commencing January 1, 2014, Delta may elect to adjust the Sales Per Enplanement figures set forth in Table 7.1(c) for inflation as measured by the Index described below. If Delta so elects, the monthly Sales Per Enplanement figures shall be increased by multiplying the original monthly Sales Per Enplanement figures from the first full Year by a fraction, the numerator of which is the most recent annual published Index number and the denominator of which is the Terminal D Base Index. In no event shall the monthly Sales Per Enplanement figures ever decrease.

For purposes of this Section 7.1(c) and 7.3(c), the "Index," is the Consumer Price Index, All Urban Consumers, New York-No. NJ-Long Isl, NY-NJ-CT-PA issued by the United States Department of Labor, Bureau of Labor Statistics, in which 1982-1984 equals one hundred (100). The Index last published prior to August 21, 2010 is the "Terminal D Base Index". If the Index is changed so that the base year differs from that used as of the last calendar year ending prior to the Effective Date, the Index will be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, Delta will select another government index or computation which, in Delta's good faith judgment, will obtain substantially the same result as would be obtained if the Index has not been discontinued or revised.

(d) Unamortized Investment Payment Credits. For twenty-nine (29) months from the Effective Date, Company shall be entitled to a monthly rent credit from Delta against the D F&B MAP of fourteen thousand nine-hundred sixteen dollars and fourteen cents (\$14,916.14), which amount is equal to the total rent credit described below less credits of \$51,397.76 taken since September, 2010, or \$432,568.04 divided by twenty-nine (29). The total rent credit is the sum of the payments previously made by Company to (i) Paradies-LaGuardia, Inc. of one hundred and ten thousand six hundred forty-six dollars and eighty cents (\$110,646.80) which was the remaining net book value as of December 31, 2010 of the displaced premises in the Paradies-LaGuardia, Inc. Concession Agreement LGA89943 dated May 1, 2006; and to (ii) The Grove, Inc. of three hundred seventy-three thousand three hundred nineteen dollars (\$373,319) which was the remaining net book value as of August 20, 2010 of the displaced premises in the Grove, Inc. Concession Agreement LGA95829 dated July 1, 2007.

## 7.2 Rent – Terminal D Retail.

(a) Transition Rent. Prior to the D Retail MAP Start Date (as defined below), Company shall pay rent in an amount equal to twelve (12%) percent of all Gross Revenues from the Terminal D Retail Premises (the "D Retail Transition Rent").

(b) Minimum Annual Payment. The initial minimum annual payment for the Terminal D Retail Premises (the "D Retail Minimum Annual Payment" or "D Retail MAP") shall commence the first day of the first full calendar month after the earlier to occur of (i) the opening of the last Permanent Concession Site that is a retail Concession Site in Terminal D (excluding, for purpose of this provision, any such Permanent Concession Site the opening of which is delayed due to any action, inaction, or request of Delta), or (ii) the date that is a full eighteen (18) months from the Effective Date (in either case, the "D Retail MAP Start Date"). The D Retail MAP payable under this Agreement shall be one million eight hundred thousand dollars (\$1,800,000), subject, however, to any adjustments provided for below and elsewhere in this Agreement. Each Year during the Term, beginning with the second full (12 month) Year after the D Retail MAP Start Date, the D Retail MAP shall equal the greater of (i) \$1,800,000 or (ii) 90% of the total D Retail MAP and D Retail Variable Payments (defined below) payable by

Company under this Agreement with respect to the prior Year. The D Retail MAP for each Year shall be payable in 12 equal monthly installments, except that the D Retail MAP for any partial Year shall be prorated based on the number of days that the D Retail MAP is in effect during such Year. The D Retail MAP for a partial month will be prorated based on a 30 day month.

(c) Variable Payment. In addition to the D Retail MAP, commencing on the D Retail MAP Start Date, Company shall make a payment (the “D Retail Variable Payment”) each month equal to the positive difference, if any, after deducting the monthly D Retail MAP from the total percentage rent figure calculated by adding together the percentage rent amount on each of the four increments of Gross Revenues from the Terminal D Retail Premises identified in the schedule below.

Table 7.2(c)		
Category	Sales	Percentage Rent
News, Gift, Specialty Retail, Pop-Up Retail and Spa	≤ \$5,000,000	12%
	\$5,000,001 - \$10,000,000	13%
	\$10,000,001 - \$20,000,000	14%
	≥ \$20,000,001	17%
Retail Display Allowances	All	25%
Lottery and Gaming Products	All	7%

### 7.3 Rent – Terminal C Food and Beverage.

(a) Transition Rent. Prior to the C F&B MAP Start Date (as defined below), Company shall pay rent in an amount equal to twelve and thirty-five one hundredths percent (12.35%) of all Gross Revenues associated with food and non-alcoholic beverages and nine and nine tenths percent (9.9%) of all Gross Revenues associated with alcoholic beverages from the Terminal C Food and Beverage Premises (the “C F&B Transition Rent”).

(b) Minimum Annual Payment. The initial minimum annual payment for the Terminal C Food and Beverage Premises (the “C F&B Minimum Annual Payment” or “C F&B MAP”) shall commence the first day of the first full calendar month after the earlier to occur of (i) the opening of the last Permanent Concession Site that is a food and beverage Concession Site in Terminal C (excluding, for purpose of this provision, any such Permanent Concession Site the opening of which is delayed due to any action, inaction, or request of Delta), or (ii) the date that is a full eighteen (18) months from the Effective Date (in either case, the “C F&B MAP Start Date”). The C F&B MAP payable under this Agreement shall be one million six hundred thousand dollars (\$1,600,000), subject, however, to any adjustments provided for below and elsewhere in this Agreement. Each Year during the Term, beginning with the second full (12 month) Year after the C F&B MAP Start Date, the C F&B MAP shall equal the greater of (i) \$1,600,000 or (ii) 90% of the total C F&B MAP and C F&B Variable Payments (defined below) payable by Company under this Agreement with respect to the prior Year. The C F&B MAP for each Year shall be payable in 12 equal monthly installments, except that the C F&F MAP for any partial Year shall be prorated based on the number of days that the C F&F MAP is in effect

during such Year. The C F&B MAP for a partial month will be prorated based on a 30 day month.

(c) Variable Payment. In addition to the C F&B MAP, commencing on the C F&B MAP Start Date, Company shall make a payment (the "C F&B Variable Payment") each month equal to the positive difference, if any, after deducting the monthly C F&B MAP from the total percentage rent figure calculated by adding together the percentage rent figure on each of the four increments of monthly Sales Per Enplanement (Terminal C) identified in the schedule below. For each increment of monthly Sales Per Enplanement (Terminal C), the percentage rent figure shall be the total monthly Terminal C Enplanements multiplied by the monthly Sales Per Enplanement (Terminal C) increment multiplied by the corresponding percent from Table 7.3(a) below. For example, with monthly Terminal C Enplanements of 243,333 and total monthly Sales Per Enplanement (Terminal C) of \$9.07 the Total Monthly Rent would be \$195,555. See example below.

(243,333 x \$5.50 =	\$1,338,333	\$1,338,333 X 9.25%	= \$123,796
(243,333 x \$1.00 =	\$243,333	\$243,333 X 9%	= \$21,900
(243,333 x \$2.50 =	\$608,333	\$608,333 X 8%	= \$48,667
(243,333 x \$0.07 =	\$17,033	\$17,033 X 7%	= \$1,192
	\$2,207,032		\$195,555

Monthly Sales Per Enplanement (Terminal C)	Monthly Terminal C Enplanements				
	≤ 233,333	233,334 – 250,000	250,001 – 266,667	266,668 – 283,333	≥ 283,334
≤ \$5.50	9%	9.25%	9.45%	9.55%	9.65%
\$5.51-\$6.50	9%	9%	9.2%	9.3%	9.4%
\$6.51-\$9.00	9%	8%	8.2%	8.3%	8.4%
≥\$9.01	9%	7%	7.2%	7.3%	7.4%

Each Year during the Term, beginning with the second full (12 month) Year after the C F&B MAP Start Date, Delta may elect to adjust the Sales Per Enplanement figures set forth in Table 7.3(c) for inflation as measured by the Index described in Section 7.1(c) above. If Delta so elects, the monthly Sales Per Enplanement figures shall be increased by multiplying the original monthly Sales Per Enplanement figures from the first full Year by a fraction, the numerator of which is the most recent annual published Index number and the denominator of which is the Terminal C Base Index. (The Index last published prior to the Effective Date is the "Terminal C Base Index".) In no event shall the monthly Sales Per Enplanement figures ever decrease.

(d) Unamortized Investment Payment Credits. For forty-eight (48) months from the Effective Date, Company shall be entitled to a monthly rent credit from Delta against the C F&B MAP of thirty-three thousand four hundred seventy-two dollars and seventy-seven cents (\$33,472.77) which is equal to one million, six hundred thousand six hundred and ninety three dollars (\$1,606,693) divided by forty-eight (48). The total rent credit is the sum of (i) \$1,503,408, which is the remaining net book value as of the Effective Date of the displaced premises in the Company's Amended and Restated Sublease and Concession Agreement with US Airways, Inc. dated March 1, 2007; and to (ii) the payments which will be made by Company to McDonald's

USA, LLC of \$103,285, which is the estimated remaining net book value as of August, 2012 of the displaced premises in the in the Company's Sublease with McDonald's USA, LLC dated March 1, 2007 (collectively, the "Terminal C NBV Amounts"). The Terminal C NBV Amounts and the associated rent credits are subject to adjustment in the event the actual net book values vary from current estimates. The Terminal C NBV Amounts paid by Delta through rent credits pursuant to this section shall be amortized over a period of fifteen years. In the event Delta elects not to extend the Terminal C Term pursuant to Section 3.1(b), then the amounts paid to Company pursuant to Section 3.1(b) on account of Company's unamortized Initial Capital Investment in Terminal C shall be offset by the then unamortized portion of the Terminal C NBV Amounts.

**7.4 Rent – Terminal C Retail.**

(a) Transition Rent. Prior to the C Retail MAP Start Date (as defined below), Company shall pay rent in an amount equal to twelve (12%) percent of all Gross Revenues from the Terminal C Retail Premises (the "C Retail Transition Rent").

(b) Minimum Annual Payment. The initial minimum annual payment for the Terminal C Retail Premises (the "C Retail Minimum Annual Payment" or "C Retail MAP") shall commence the first day of the first full calendar month after the earlier to occur of (i) the opening of the last Permanent Concession Site that is a retail Concession Site in Terminal C (excluding, for purpose of this provision, any such Permanent Concession Site the opening of which is delayed due to any action, inaction, or request of Delta), or (ii) the date that is a full eighteen (18) months from the Effective Date (in either case, the "C Retail MAP Start Date"). The C Retail MAP payable under this Agreement shall be one million nine hundred thousand dollars (\$1,900,000), subject, however, to any adjustments provided for below and elsewhere in this Agreement. Each Year during the Term, beginning with the second full (12 month) Year after the C Retail MAP Start Date, the C Retail MAP shall equal the greater of (i) \$1,900,000 or (ii) 90% of the total C Retail MAP and C Retail Variable Payments (defined below) payable by Company under this Agreement with respect to the prior Year. The C Retail MAP for each Year shall be payable in 12 equal monthly installments, except that the C Retail MAP for any partial Year shall be prorated based on the number of days that the C Retail MAP is in effect during such Year. The C Retail MAP for a partial month will be prorated based on a 30 day month.

(c) Variable Payment. In addition to the C Retail MAP, commencing on the C Retail MAP Start Date, Company shall make a payment (the "C Retail Variable Payment") each month equal to the positive difference, if any, after deducting the monthly C Retail MAP from the total percentage rent figure calculated by adding together the percentage rent amount on each of the four increments of Gross Revenues from the Terminal C Retail Premises identified in the schedule below.

Table 7.4(c)		
Category	Sales	Percentage Rent
News, Gift, Specialty Retail, Pop-Up Retail and Spa	≤ \$5,000,000	12%
	\$5,000,001 - \$10,000,000	13%
	\$10,000,001 - \$20,000,000	14%
	≥ \$20,000,001	17%

Retail Display Allowances	All	25%
Lottery and Gaming Products	All	7%

7.5 **C Retail Unamortized Investment Payments.** Separate and apart from any other Payments payable under this Agreement, including but not limited to the Payments of Transition Rent, the Minimum Annual Payments and the Variable Payments, Company shall pay any amounts that become due and owing by Delta to HDS Retail for the Watermark, NY Scene, Relay (arrivals), USA Today and Relay (departures level)) spaces and any amounts that become due and owing by Delta to InMotion, Brookstone and Xpress Spa, in an aggregate amount currently estimated to be \$1,692,289 for all such spaces, in each case on account of the remaining net book value of fixed improvements for the spaces recaptured by Delta in Terminal C and turned over and leased to Company under this Agreement as part of the Terminal C Retail Premises.

7.6. **Advertising.** Separate and apart from any other Payments payable under this Agreement, including but not limited to the Payments of Transition Rent, the Minimum Annual Payments and the Variable Payments, Gross Revenues from third-party advertising in, on or about the Premises, including without limitation advertising associated with the Company's use of iPads (or similar next generation devices), will be divided forty percent (40%) to Company, forty percent (40%) to Delta, and twenty percent (20%) to Lessor. The Payments required by this Section shall be made as Additional Payments.

7.7 **Enplanement Protection.**

(a) In the event that the number of Enplanements in Terminal D for any consecutive three-month period, is less than 700,000 Enplanements, then the monthly Payments of D F&B MAP and D Retail MAP shall be suspended for all subsequent months thereafter until the first three month period that the number of Enplanements in Terminal D for such months equals or exceeds 700,000. Any objection or exception raised by the Lessor to the suspension of the monthly D F&B MAP and D Retail MAP Payments pursuant to this provision shall only require payment of the Lessor's portion of such monthly MAP Payments. During any period of suspension of the D F&B MAP and D Retail MAP (including without limitation during periods of Company improvements if so provided in Article VIII), Company shall continue to pay the D F&B Variable Payment and D Retail Variable Payment to Delta and Lessor as set forth in this Agreement (except that for purposes of calculating such Variable Payments, the applicable MAP shall be deemed to be \$0.00).

(b) In the event that the number of Enplanements in Terminal C for any consecutive three-month period, is less than 700,000 Enplanements, then the monthly Payments of C F&B MAP and C Retail MAP shall be suspended for all subsequent months thereafter until the first three month period that the number of Enplanements in Terminal C for such months equals or exceeds 700,000. Any objection or exception raised by the Lessor to the suspension of the monthly C F&B MAP and C Retail MAP Payments pursuant to this provision shall only require payment of the Lessor's portion of such monthly MAP Payments. During any period of suspension of the C F&B MAP and C Retail MAP (including without limitation during periods of Company improvements if so provided in Article VIII), Company shall continue to pay the C F&B Variable Payment and C Retail Variable Payment to Delta and Lessor as set forth in this Agreement (except that for purposes of calculating such Variable Payments, the applicable MAP shall be deemed to be \$0.00).

**7.8 Monthly Payments and Reports.**

(a)(i) Transition Rent Payments. On or before the twentieth day of each month during the Term, Company shall pay, without demand or invoice and in legal tender of the United States of America, all Payments of Transition Rent then due and payable hereunder.

(ii) Minimum Annual Payments. On or before the first day of each month during the Term, Company shall pay, without demand or invoice and in legal tender of the United States of America, the monthly installments of the Minimum Annual Payments then due and payable hereunder.

(iii) Variable Payments - On or before the twentieth day of each month during the Term, Company shall pay, without demand or invoice (provided Delta timely reports monthly Enplanements to Company where necessary) and in legal tender of the United States of America, all Variable Payments then due and payable hereunder.

(b) Reports - Beginning on the 20th day of the month after the Effective Date and on or before the 20<sup>th</sup> day of each month thereafter, Company shall submit to Lessor and Delta monthly reports setting forth the amount of Company's Gross Revenues and (provided Delta timely reports monthly Enplanements to Company), Monthly Sales Per Enplanement for the preceding month in the format set out in Exhibit E, and shall break down revenues by unit and sales within each unit as may be required by Lessor or Delta. Company shall also submit monthly reports of Gross Revenues from third-party advertising in, on or about the Premises, including without limitation advertising associated with the Company's use of iPads (or similar next generation devices). Such reports shall be signed by a responsible officer of Company and shall accompany the Variable Payment and Additional Payment for the month reported.

(c) All payment of Transition Rent and installments of the Minimum Annual Payments and all Variable Payments for the Terminal C Food and Beverage Premises and the Terminal D Food and Beverage Premises shall be made as follows: twenty percent (20%) to Lessor and eighty percent (80%) to Delta.

(d) All payment of Transition Rent and installments of the Minimum Annual Payments and all Variable Payments for the Terminal C Retail Premises and the Terminal D Retail Premises shall be made as follows: fifty percent (50%) to Lessor and fifty percent (50%) to Delta.

(e) All Payments to Delta should be made payable to Delta Air Lines, Inc. and mailed to:

Delta Air Lines, Inc.  
**P.O. Box 101153**  
Atlanta, Georgia 30392-1153  
(with reference to Delta contract number 106153)

All Payments to Lessor should be mailed to:

The Port Authority of New York and New Jersey  
P.O. Box 95000- 1517  
Philadelphia, PA. 19195 - 1517

Or, if Lessor requires payments by ACH, shall be paid via ACH to:

Name of Bank - Commerce Bank

**Bank ABA Number - 026013673**

Account Number -

7.9 **Year End Adjustment.** Within one hundred and twenty (120) days after the end of each Year, Company shall pay to Lessor and Delta the balance of the amount, if any, due to Lessor and Delta for the preceding Year on account of Transition Rent or the Variable Payment provisions hereof. If it is established that Company has overpaid Lessor and Delta, then such overpayment shall be credited to Payments next thereafter due from Company. The receipt by Delta and Lessor of any statement or Transition Rent or Variable Payment for any period will not bind Delta or Lessor as to the correctness of the statement or payment. Lessor and Delta are each entitled at any time after the receipt of any such statement or payment to question the sufficiency of the amount paid or the accuracy of the statements furnished by Company.

7.10 **Utilities.**

(a) Company shall pay, before delinquency, all fees and charges for water, gas, electricity, sewer, heat, power, rubbish and garbage collection and any and all other similar charges imposed in connection with the provision of utility services to the Premises, including without limitation cost of meter installation, connection, hook up and standby fees and penalties for discontinued or interrupted service. Those charges shall be paid directly to the entity collecting the same. Delta may, but is not obligated to, supply any utility service or services. If Delta supplies any utilities or services, then in addition to the Minimum Annual Payment and other amounts specified in this Agreement, Company shall pay as an Additional Payment, monthly, on the first day of each month, a utility charge established by Delta, for utilities furnished or services provided to the Premises. If Company fails to pay any such amount to Delta within ten days from the date such Payments are due and until the date all such amounts are paid in full, Delta may cut off and discontinue, without further notice to Company, any such utilities furnished to the Premises by Delta. If any fees or charges payable to a third party utility provider are not paid by Company when due, Delta may, but is not obligated to, pay the same and any amount so paid will immediately thereafter become due and payable to Delta from Company as an Additional Payment.

(b) The current allocated utility expenses for Terminal D shall equal \$27.50/square foot per year for all Premises located in Terminal D excluding the Terminal D Retail Premises, the Terminal D Support Space Premises, the Terminal D Gate Holdroom Areas, and the Terminal D food court seating area. The current allocated utility expense for the Terminal D Retail Premises, the Terminal D Support Space Premises, and the Terminal D food court seating area shall equal \$5.10/square foot per year. There will be no utility charge for Gate Holdroom Areas in Terminal D.

(c) The current allocated utility expenses for Terminal C shall equal \$1.97 square foot per year for all premises located in Terminal C excluding the Terminal C Gate Holdroom Areas. There will be no utility charge for Gate Holdroom Areas in Terminal C. The parties acknowledge that Company pays gas utility charges directly to the utility provider based on sub metered usage.

7.8 **Monthly Payments and Reports.**

(a)(i) Transition Rent Payments. On or before the twentieth day of each month during the Term, Company shall pay, without demand or invoice and in legal tender of the United States of America, all Payments of Transition Rent then due and payable hereunder.

(ii) Minimum Annual Payments. On or before the first day of each month during the Term, Company shall pay, without demand or invoice and in legal tender of the United States of America, the monthly installments of the Minimum Annual Payments then due and payable hereunder.

(iii) Variable Payments - On or before the twentieth day of each month during the Term, Company shall pay, without demand or invoice (provided Delta timely reports monthly Enplanements to Company where necessary) and in legal tender of the United States of America, all Variable Payments then due and payable hereunder.

(b) Reports - Beginning on the 20th day of the month after the Effective Date and on or before the 20<sup>th</sup> day of each month thereafter, Company shall submit to Lessor and Delta monthly reports setting forth the amount of Company's Gross Revenues and (provided Delta timely reports monthly Enplanements to Company), Monthly Sales Per Enplanement for the preceding month in the format set out in Exhibit E, and shall break down revenues by unit and sales within each unit as may be required by Lessor or Delta. Company shall also submit monthly reports of Gross Revenues from third-party advertising in, on or about the Premises, including without limitation advertising associated with the Company's use of iPads (or similar next generation devices). Such reports shall be signed by a responsible officer of Company and shall accompany the Variable Payment and Additional Payment for the month reported.

(c) All payment of Transition Rent and installments of the Minimum Annual Payments and all Variable Payments for the Terminal C Food and Beverage Premises and the Terminal D Food and Beverage Premises shall be made as follows: twenty percent (20%) to Lessor and eighty percent (80%) to Delta.

(d) All payment of Transition Rent and installments of the Minimum Annual Payments and all Variable Payments for the Terminal C Retail Premises and the Terminal D Retail Premises shall be made as follows: fifty percent (50%) to Lessor and fifty percent (50%) to Delta.

(e) All Payments to Delta should be made payable to Delta Air Lines, Inc. and mailed to:

Delta Air Lines, Inc.  
**P.O. Box 101153**  
Atlanta, Georgia 30392-1153  
(with reference to Delta contract number 106153)

All Payments to Lessor should be mailed to:

The Port Authority of New York and New Jersey  
P.O. Box 95000- 1517  
Philadelphia, PA. 19195 - 1517



*Or, if Lessor requires payments by ACH, shall be paid via ACH to:*

Name of Bank - Commerce Bank  
**Bank ABA Number - 026013673**  
Account Number - (Ex. 1)

**7.9 Year End Adjustment.** Within one hundred and twenty (120) days after the end of each Year, Company shall pay to Lessor and Delta the balance of the amount, if any, due to Lessor and Delta for the preceding Year on account of Transition Rent or the Variable Payment provisions hereof. If it is established that Company has overpaid Lessor and Delta, then such overpayment shall be credited to Payments next thereafter due from Company. The receipt by Delta and Lessor of any statement or Transition Rent or Variable Payment for any period will not bind Delta or Lessor as to the correctness of the statement or payment. Lessor and Delta are each entitled at any time after the receipt of any such statement or payment to question the sufficiency of the amount paid or the accuracy of the statements furnished by Company.

**7.10 Utilities.**

(a) Company shall pay, before delinquency, all fees and charges for water, gas, electricity, sewer, heat, power, rubbish and garbage collection and any and all other similar charges imposed in connection with the provision of utility services to the Premises, including without limitation cost of meter installation, connection, hook up and standby fees and penalties for discontinued or interrupted service. Those charges shall be paid directly to the entity collecting the same. Delta may, but is not obligated to, supply any utility service or services. If Delta supplies any utilities or services, then in addition to the Minimum Annual Payment and other amounts specified in this Agreement, Company shall pay as an Additional Payment, monthly, on the first day of each month, a utility charge established by Delta, for utilities furnished or services provided to the Premises. If Company fails to pay any such amount to Delta within ten days from the date such Payments are due and until the date all such amounts are paid in full, Delta may cut off and discontinue, without further notice to Company, any such utilities furnished to the Premises by Delta. If any fees or charges payable to a third party utility provider are not paid by Company when due, Delta may, but is not obligated to, pay the same and any amount so paid will immediately thereafter become due and payable to Delta from Company as an Additional Payment.

(b) The current allocated utility expenses for Terminal D shall equal \$27.50/square foot per year for all Premises located in Terminal D excluding the Terminal D Retail Premises, the Terminal D Support Space Premises, the Terminal D Gate Holdroom Areas, and the Terminal D food court seating area. The current allocated utility expense for the Terminal D Retail Premises, the Terminal D Support Space Premises, and the Terminal D food court seating area shall equal \$5.10/square foot per year. There will be no utility charge for Gate Holdroom Areas in Terminal D.

(c) The current allocated utility expenses for Terminal C shall equal \$1.97 square foot per year for all premises located in Terminal C excluding the Terminal C Gate Holdroom Areas. There will be no utility charge for Gate Holdroom Areas in Terminal C. The parties acknowledge that Company pays gas utility charges directly to the utility provider based on sub metered usage.



(d) Neither Delta nor Lessor is liable to Company for any loss, damage or expense that Company sustains in the event that any utility or other service provided or to be provided to the Premises is not available or fails or is interrupted or curtailed from any cause whatsoever, nor will any such unavailability, failure, interruption or curtailment constitute constructive eviction of Company or excuse or relieve Company from its obligations under this Agreement except that Company will not be required to operate its business in Concession Sites that for any period are untenable by reason of that unavailability, failure, interruption or curtailment. Delta and Lessor have no obligation to provide to Company or the Premises any utility service or any facilities for the delivery of utility services to the Premises except, if at all, as expressly stated in the Tenant Handbook.

(e) Company shall comply with the conservation, use and recycling policies and practices from time to time established by Delta and/or Lessor for the use of utilities and services supplied by Delta and/or Lessor, and the utility charges payable by Company under this Agreement may include such excess usage penalties or surcharges as may from time to time be established by Delta or Lessor for the Airport. Delta or Lessor may reduce the utilities supplied to the Premises and the common areas as required or permitted by any mandatory or voluntary water, energy or other conservation statute, regulation order or allocation or other program.

**7.11 Method of Payment; Interest.** (a) Payments shall be made in lawful money of the United States, free from all claims, demands, set-offs or counterclaims of any kind. Without waiving any other right of action available to Delta or Lessor, in the event payment of any amount owed by Company under this Agreement is overdue, Company shall pay to Delta and Lessor interest thereon, subject to any applicable maximum legal rate permissible, at the higher of, the rate of eighteen percent (18%) per annum or the rate Lessor charges with respect to overdue payments under any of the Terminal Leases, in either case covering the period commencing on the date such amount was due and continuing until full payment (plus interest) has been paid.

(b) LATE CHARGE. COMPANY ACKNOWLEDGES THAT LATE PAYMENT BY COMPANY TO DELTA AND LESSOR OF ANY PAYMENTS DUE UNDER THIS AGREEMENT WILL CAUSE DELTA AND LESSOR TO INCUR COSTS NOT CONTEMPLATED BY THIS AGREEMENT, THE EXACT AMOUNT OF THOSE COSTS BEING EXTREMELY DIFFICULT AND IMPRACTICAL TO FIX. THOSE COSTS INCLUDE, WITHOUT LIMITATION, PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES THAT MAY BE IMPOSED BY THE TERMS OF ANY INDEBTEDNESS SECURED BY ANY ENCUMBRANCE COVERING THE PREMISES. THEREFORE, IF ANY PAYMENT DUE FROM COMPANY IS NOT RECEIVED BY DELTA AND LESSOR PROMPTLY WHEN DUE, COMPANY SHALL PAY TO DELTA AND LESSOR THE GREATER OF \$1,000.00 OR 5% OF THE OVERDUE PAYMENT AS A LATE CHARGE. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COST THAT DELTA AND LESSOR WILL INCUR BY REASON OF LATE PAYMENT BY COMPANY. ACCEPTANCE OF ANY LATE CHARGE DOES NOT CONSTITUTE A WAIVER OF COMPANY DEFAULT WITH RESPECT TO THE OVERDUE AMOUNT, OR PREVENT DELTA AND LESSOR FROM EXERCISING ANY OTHER RIGHTS OR REMEDIES AVAILABLE TO DELTA AND LESSOR.

DELTA \_\_\_\_\_ COMPANY \_\_\_\_\_

**7.12 Books and Records.** Company shall prepare and keep full, complete and proper books, records and source documents, in accordance with generally accepted accounting

principles, of all Gross Revenues, whether for cash, credit or otherwise, of each unit and of each separate category at any time operated within each unit of the Premises and of the operations of each subtenant, concessionaire, licensee and assignee, and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Company.

**7.13 Annual Report of Gross Revenues.** Within one hundred and twenty (120) days after the end of each Year, Company shall submit to Delta an annual report of Gross Revenues for the preceding Year covering all business transacted by Company under this Agreement. Such annual report shall be certified by an independent Certified Public Accountant, Company's Chief Financial Officer or other authorized officer of Company and shall be prepared in accordance with generally accepted auditing standards, including, but not limited to, the Statement of Auditing Standards (S.A.S.) #62 - Special Reports, Paragraph 18. The independent Certified Public Accountant shall certify that Company's schedule of Gross Revenues and such other activity related to Payments of Transition Rent or Variable Payments, as defined in this Agreement, is free from material misstatements and that the statements and Payments to Delta and Lessor resulting therefrom are in accordance with this Agreement. Any adjustments to Company's Payments under this Agreement shall be separately stated and remitted. No adjustment shall be permitted to the then-current fees and charges without Delta's specific written authorization.

**7.14 Audit Rights.** Upon three business days' notice, Lessor and Delta each reserve the right to audit the books, records and source documents of Gross Revenues of Company and each subtenant, concessionaire, licensee and assignee at Company's principal place of business or other location designated by Company in the continental United States for purposes of verifying Gross Revenues reported by and Payments due from Company hereunder. Should any examination, inspection and audit of such books and records by Lessor or Delta disclose, and it was then determined that there was, an understatement of annual Gross Revenues received from all operations in the Premises by three percent (3%) or more, the entire expense of such audit shall be paid by Company. Any additional Transition Rent or Variable Payments due shall be paid by Company to Lessor and Delta with interest thereon at the rate specified above. Lessor and Delta reserve the right to audit Company's books and records with respect to any other matters related to Company's obligations under this Agreement. If such audit reveals that Company is not in compliance with any of its obligations, the entire expense of such audit shall be paid by Company. If an audit by Lessor or Delta or their representatives determines that a statement of Gross Revenues sales previously made by Company understated Gross Revenues by 5% or more than the amount of Company's Gross Revenues determined by the audit, or if the audit determines that Company failed to maintain books, records and source documents sufficient to allow an audit to be performed in accordance with generally accepted auditing standards, then at any time thereafter, Delta may terminate this Agreement by written notice to Company.

**7.15 Nature of Agreement.** It is the intent of the parties to this Agreement that the Payments made by Company under this Agreement be net of all charges except as otherwise expressly stated. Therefore, if any charge, including but not limited to taxes, is designed so as to require payment without possibility of reimbursement from Company, the Payments payable under this Agreement will be increased by the amount of that charge so that the net sum received by Delta and Lessor hereunder will be the same as contemplated otherwise under the provisions of this Agreement. Under no circumstances will Delta or Lessor be obligated to make any payment of any kind with respect to Company's use or occupancy of the Premises, except, if at all, as expressly stated in this Agreement. Except, if at all, as expressly stated in this Agreement, no occurrence or situation arising during the Term of this Agreement, nor any present or future law, whether foreseen or unforeseen, will relieve Company from its obligation

to pay all of the sums required by this Agreement, or relieve Company from any of its other obligations under this Agreement, or give Company the right to terminate this Agreement in whole or in part. Company waives any rights now or hereafter conferred upon it by any existing or future law to terminate this Agreement or to receive any abatement, diminution, reduction or suspension of payment of such sums on account of such occurrence or situation.

**7.16 Additional Payments.** In addition to the payment of Transition Rent, the Minimum Annual Payments and Variable Payments provided for in this Agreement, Company shall pay all rents, charges, fees, damages, expenses, contributions, assessments, payments, costs and other sums of money required to be paid by Company under this Agreement ("Additional Payments"), regardless of how the same are designated. If Additional Payments are not paid at the time provided in this Agreement, they shall nevertheless be collectible, together with any interest or late charges provided in this Agreement, with the next installment of Minimum Annual Payments thereafter falling due, but nothing contained in this Section will be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable under this Agreement, or limit any other remedy of Delta or Lessor. Delta's invoice or demand for Additional Payments under this Agreement may be made by regular mail, notwithstanding the provisions of this Agreement concerning notices. If the time for payment of any Additional Payment is not specified in this Agreement, then that Additional Payment will be due and payable 30 days after Delta's invoice or demand is given.

## **ARTICLE VIII: IMPROVEMENTS TO PREMISES**

**8.1 Delivery of the Premises.** Delta will deliver the Premises to Company in accordance with the Tenant Handbook. Except as otherwise provided herein and in the Tenant Handbook, Company agrees to accept possession of the Premises in their "as is" condition and Delta has no responsibility for any work or improvement that may be required to prepare the Premises for Company's or any subtenant's use or for any work in remodeling the Premises. Company has conducted its own inspections and has relied entirely thereupon and upon those of its agents, representatives and consultants in evaluating the physical condition of the Premises. Delta will provide utilities to the lease line of each Concession Site with capacities sufficient to allow the Company to conduct its business as proposed, except that in Terminal C, Delta shall only provide electrical power to the main panel nearest to each Concession Site with capacities sufficient to allow the Company to conduct its business as proposed and Company shall run electrical power from such panel to the lease line of each Terminal C Concession Site. Delta shall also perform, or at Delta's option, reimburse Company for the costs of any base building upgrades or modifications that may be required by the Lessor or applicable building codes with respect to electrical service capacity or fire safety, sprinkler or other key systems. The Company shall be responsible to distribute utilities within the Premises and tie-in to fire safety, sprinkler and other building systems as required by the Lessor and applicable building codes. Under no circumstances shall the Company be responsible for providing sprinkler service to the Gate Holdroom Areas or common areas of the Delta Facilities.

### **8.2 Company's Improvement Obligations.**

(a) Company agrees to design and construct the Premises pursuant to Chapter II of the Tenant Handbook and the design, layout and material finishes described in the proposals provided by the Company and approved by Delta. Delta agrees to use reasonable efforts to provide Company with detailed construction drawings and as-builts of the Premises as soon as practicable. As used herein the term "Initial Capital Investment" shall mean all reasonable direct costs paid by Company for the initial improvements to the Premises, including furniture, fixtures,

and equipment, except for: (a) items with a useful life of less than three (3) years; (b) architectural, engineering, professional and consulting costs exceeding fifteen percent (15%) of the total costs of such investment; (c) interest and other financing charges; (d) Company's own overhead expenses; (e) improvements made to a Concession Site after its Opening Date (defined below) not related to the initial improvements, and (f) inventory costs of any kind. The Initial Capital Investment shall also include any amounts paid by the Company pursuant to Section 7.5. For purposes of computing depreciation/amortization of the Initial Capital Investment, Company's approved and certified costs included in the Initial Capital Investment shall be depreciated/amortized over a period equal to the Terminal D Term or Terminal C Term, as applicable (assuming both the Terminal D Term and Terminal C Term are extended by Delta pursuant to Section 3.1(b)) but not for more than fifteen (15) years, commencing on the Opening Date of the Concession Site in which such Initial Capital Investment is made, on a straight line basis with no salvage value.

(b) Company agrees to expend no less than \$15,000,000 for food and beverage concessions related Initial Capital Investments in Terminal D. Company agrees to expend no less than \$1,000,000 for retail concessions related Initial Capital Investments in Terminal D. Company agrees to expend no less than \$20,000,000 for food and beverage concessions related Initial Capital Investments in Terminal C. Company agrees to expend no less than \$2,000,000 for retail concessions related Initial Capital Investments in Terminal C, in addition to amounts paid by the Company pursuant to Section 7.5. During the term of the Terminal D Concession Agreement and prior to the Effective Date of this Agreement, Company made Initial Capital Investments in four (4) food and beverage concessions located in Terminal D. The Initial Capital Investments in these four (4) food and beverage concessions shall be credited towards the \$15,000,000 commitment for food and beverage concessions related Initial Capital Investments in Terminal D.

(c) Company acknowledges that the Concession Sites comprising the Premises may be delivered to Company in phases and that as a result Company will be obligated to perform Company's work in phases. For each Concession Site designated on Exhibits B.1 – B.2 and B.5 – B.6 (a "Permanent Concession Site"), Company shall complete construction of each Permanent Concession Site by the date specified on Exhibit K, as the same may be amended by agreement of the parties from time to time (the "Opening Date"). Opening Dates shall only be deferred for delays not caused by Company. Delta will decide in its sole discretion, exercised reasonably, whether Company is responsible for any delays in Opening Dates. With respect to each Permanent Concession Site, Delta may designate a temporary Concession Site where Company shall, at its sole cost and expense, install and operate temporary facilities (a "Temporary Concession Site") in accordance with Section 2.5. Upon the Opening Date of each Permanent Concession Site, Company shall have no further right to use any related Temporary Concession Site and Company shall vacate and surrender such Temporary Concession Site(s) and remove any related temporary facilities. Company shall open for business in each Permanent Concession Site no later than the Opening Date for such site and upon Delta's request shall execute a written acknowledgment of the Opening Date for such site in the form attached to this Agreement as Exhibit I ("Eye"). In addition, immediately upon notice from Delta that a Temporary Concession Site shall be surrendered, Company shall remove its temporary facilities and vacate and surrender such Temporary Concession Site.

(d) Within one-hundred twenty (120) days following substantial completion of each Permanent Concession Site, Company agrees to provide Delta with a certification of the actual Initial Capital Investment for that Permanent Concession Site, together with duplicate original paid invoices to Company verifying the certified amount of investment for such Permanent Concession Site. If Delta determines, based on the documentation provided by Company, that the total actual

Initial Capital Investment improvement costs for all the Permanent Concession Sites in each of the Terminals is less than the amount that the Company has agreed to spend as set Section 8.2(b) above, then Company agrees to pay Lessor and Delta, within thirty (30) days after such determination, the difference between the actual cost and such agreed amount. This payment shall be divided equally between Lessor and Delta. Any payments paid to Lessor and Delta as a result of this provision shall not be deemed a cost of the Initial Capital Investment obligation for any purpose hereunder nor shall it be deemed payment of or receipt of any Variable Payments or Minimum Annual Payment due hereunder. At any time, upon three business days' notice, Delta, Lessor or their representatives may audit all of Company's books, records and source documents related to the improvement costs paid by Company on account of its Initial Capital Investment. If the audit reveals that the improvement costs paid by Company were less than those stated in Company's certification, then Company shall pay Delta and/or Lessor for the costs incurred by Delta and/or Lessor in connection with the audit plus any additional deficiency discovered between the improvement costs paid by Company and the amounts set forth on Section 8.2(b).

(e) It is understood and agreed that, upon completion of Company's Initial Capital Investment in the Premises, "as built" drawings shall be submitted to Delta and when accepted by Delta will become Exhibit F, supplementing the existing Exhibits without otherwise having to amend this Agreement to do so.

### **8.3 Company's Refurbishment Obligation.**

(a) Company agrees to maintain the Premises in a first-class, like new condition that is attractive and inviting to customers. To that end, over the course of the Term (and generally during each Year after the first Year), Company agrees to spend a dollar amount that is at least equal to one percent (1%) of each such Year's Gross Revenues to make periodic upgrades, improvements, refurbishments and renovations necessary to maintain the Leased Premises in a first-class, like-new condition at all times during the Term of the Lease. Unless shown to be unreasonable by "clear, cogent and convincing evidence," Delta shall be the final arbiter of what constitutes "first-class, like new condition." For purposes of this Section 8.3(a), the Year after the first Year for the Crust, and Bar Brace (oasis) Concession Sites in the Terminal D Food and Beverage Premises is calendar year 2012.

(b) Company shall submit to the Delta a schedule of the upgrade, repair or refurbishment before starting any work, which shall include painting and repair attributable to ordinary wear and tear, and replacement of furniture, trade fixtures and equipment. In addition, Company shall continuously review and analyze new trends or concepts in the industry and agrees to improve its operation by applying such new trends or concepts at the Airport, subject to Delta's prior written approval. To the extent the cost of such improvements would cause the amounts spent on such improvements plus all other refurbishment work performed under this provision in any Year to exceed one percent (1%) of the Gross Revenues for such Year, the Company will be entitled to credits against future required refurbishments work on a dollar for dollar basis.

(c) Within one-hundred twenty (120) days following the end of each Year, Company agrees to provide Delta with a certification of the actual costs paid for the remodeling and refurbishment from the prior Year, together with duplicate original paid invoices to Company verifying the certified amount of investment for such refurbishment and remodeling. If at the end of the Term Delta determines, based on the documentation provided by Company, that the total actual costs for all such refurbishment, and remodeling is less than one percent (1.0%) of all

Gross Revenues generated throughout the Term of this Agreement, Company agrees to pay Lessor and Delta, within thirty (30) days of such determination, the difference between the actual cost and the one percent (1.0%) of all Gross Revenues. This payment shall be divided between Lessor (twenty percent (20%)) and Delta (eighty percent (80%)). Any payments paid to Lessor and Delta as a result of this provision shall not be deemed a cost of the refurbishment and remodeling obligation for any purpose hereunder nor shall it be deemed payment of or receipt of any Variable Payments or Minimum Annual Payment due hereunder.

**8.4 Timeliness of Work.** Except for delays that Delta reasonably determines are not caused by the Company, including but not limited to Lessor delays in permitting and inspections beyond the projections in Exhibit K, failure to complete any improvements required to be made to the applicable portions of the Premises or failure to complete any other required improvements within the time specified on Exhibit K shall constitute a material breach of this Agreement. Except for delays that Delta reasonably determines are not caused by the Company, in the event of a delay longer than ninety (90) days, at Delta's option (i) the applicable portion of the Premises that was not completed within such 90 days shall be deleted from this Agreement and shall revert to Delta, (ii) the Term shall be reduced by one day for each Concession Site that is delayed past the Opening Date in Exhibit K, (iii) Company shall remit to Delta the sum of \$1,000 per day per Concession Site delayed, which sum shall be divided between Delta (which shall be paid 80%) and Lessor (which shall be paid 20%), as liquidated damages for each day such Concession Site is not operational, (iv) the Net Book Value obligations per Section 2.6 shall not apply to this portion of the Premises, and (v) the MAP adjustments and limits on competing agreements and Concession Sites in Section 4.2 will also not apply to this portion of the Premises. Delta will decide in its sole discretion whether Company is responsible for any delays in Opening Dates. This liquidated damage provision shall be in addition to and not in limitation of Delta's other rights and remedies including, but not limited to, Delta's right to terminate this Agreement because of such breach.

**8.5 Additional Non-Structural Improvements.** Upon completion of improvements to the Premises outlined hereinabove, Company shall have the right to install or erect additional, nonstructural improvements in the Premises; provided however, that all such alterations be commenced only after plans and specifications therefore have been submitted to and approved by Delta and Lessor. Any such alterations and/or repairs shall be without cost to Lessor and Delta, completed within the time specified in the written approval, and with the least disturbance possible to the operation of the Airport, to the Airport tenants and to the public.

**8.6 Removal or Demolition of Improvements.** Company shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of Lessor and Delta, which consent may be conditioned upon the obligation of Company to replace the same by a specified improvement.

**8.7 Amortization of Fixed Improvements.** Within one hundred and twenty (120) days after the end of each Year, Company shall provide Delta with a depreciation and/or amortization schedule, as appropriate, for all Fixed Improvements and Trade Fixtures made pursuant to Article VIII of this Agreement. For purposes of computing depreciation/amortization of Fixed Improvements, Company's approved and certified cost for such Fixed Improvements shall be depreciated/amortized over a period equal to the Terminal D Term or Terminal C Term, as applicable (assuming both the Terminal D Term and Terminal C Term are extended by Delta pursuant to Section 3.1(b)) but not for more than fifteen (15) years, commencing on the Opening Date of the Concession Site in which such improvement or fixture is located, on a straight line basis with no salvage value.

**8.8 Lessor, Delta & the Concession Manager Not Liable for Opening Date Delay.**

Company acknowledges and accepts that neither Lessor, Delta nor the Concession Manager shall be liable for any losses, damage or other expenses incurred by Company due to delays in Company being given access to the Premises or Opening Date delays caused by any failure of any existing tenant to vacate any portion of the Premises, failure to have received any required Lessor consent or approval, or any construction or delays in construction with respect to the Delta Facilities by or for Lessor, Delta or others using the facilities with Delta's consent.

**8.9 Plan Review Fees.** Within 30 days after demand, Company shall reimburse Delta and Lessor for all costs and expenses incurred by Delta in reviewing and approving plans submitted by Company for review by Delta. Delta agrees that for all drawings submitted by Company, Company's reimbursement obligation will not exceed \$0.00 per square foot of the portion of the Premises affected by the work described in the drawings. In addition, Delta agrees that Company's reimbursement obligation for Delta's review and approval of one construction set of drawings and no more than one revision of the same or revised construction drawings for each Concession Site will not exceed \$0. This limitation does not apply to subsequent revisions of the same construction drawings.

**8.10 Right to Install FIDs.** It is understood that Delta shall have the right to install, at any time, flight information display equipment ("FIDs") in those portions of the Premises that it deems appropriate. Company shall do nothing to interfere with the visibility or access to FIDs. Delta will use its best efforts not to unreasonably interfere with Company's operation while installing and maintaining FIDs.

**8.11 Title to Property.** All Fixed Improvements (other than Trade Fixtures) made by Company at the Premises and any additions and alterations thereto made by Company (all of which are intended to become a permanent part of the Delta Facilities) shall be and remain the property of Delta or the owner of the Airport (at no cost to such owner) upon installation or affixation of same. Any Trade Fixtures and Personal Property of Company shall remain the property of Company except as provided in Article XV.

**ARTICLE IX: MAINTENANCE AND REPAIRS**

**9.1 General Requirements.** Company agrees to provide at its own expense such maintenance, repair, custodial and cleaning services and supplies as may be necessary or required by Delta and Lessor in the operation of its concessions and the repair and maintenance of the Premises. Without limitation on the foregoing, Company shall, at its sole cost and expense, keep, repair, maintain and replace each and every portion of the Premises and appurtenances, including doors, windows, moldings, storefront, Company-installed heating, ventilating, air conditioning equipment and cooking equipment (if any) serving the Premises and the interior of the Premises, in clean, good and sanitary order, condition and repair. Company shall keep the Premises in a first-class condition that is inviting and attractive to customers and in good order, condition, cleanliness and repair. Company shall maintain the improvements, furniture, fixtures, iPads, electrical outlets and similar items in the Gate Holdroom Areas, to the same standards. Company shall replenish and replace or shall cause its subtenants to replenish and replace glass ware, small wares and consumables required for the operations of the Concession Sites so that the concessions are able at all times to operate in a first class manner. Company shall maintain the Premises and keep the other common areas of the Delta Facilities used by Company in the normal course of business (e.g., loading dock, trash and storage areas) clean and free of Company generated debris.

9.2 **Delta and Lessor Inspection and Access.** Officers, employees or representatives of Lessor or Delta shall have the right, but not the obligation, to enter the Premises at all reasonable times or at any time in the case of an emergency to:

(a) inspect the Premises to determine whether Company has complied with and is complying with the terms and conditions of this Agreement. Delta may, at its discretion, require Company to effect repairs at Company's own cost;

(b) perform any and all things which Company is obligated to and has failed to do after fifteen (15) days' written notice (or no notice in the case of an emergency) to act, including maintenance, repairs and replacements to the Premises. The cost of all labor, materials and other charges required for performance of such work, plus fifteen percent (15%) thereof for administrative overhead, will be paid by Company to Delta within thirty (30) days following receipt of invoice by Company; or

(c) perform any duty or function which Lessor or Delta may have in relation to the operations of the Airport; or

(d) perform cleaning or custodial obligations which Company has failed to perform after three (3) days' written notice to act within the Premises. The cost of all labor, materials and other charges required for performance of such work, plus fifteen percent (15%) thereof for administrative overhead, will be paid by Company to Delta within thirty (30) days following receipt of invoice by Company.

9.3 **Waste.** Company may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant or other occupant of the Delta Facilities or the Airport.

9.4 **Surrender.** Company shall return the Premises to Delta at the expiration or earlier termination of this Agreement in good and sanitary order, condition and repair, and broom clean. All damage to the Premises caused by the removal of Trade Fixtures, signs and other personal property that Company is permitted to remove under the terms of this Agreement shall be repaired by Company and that restoration completed by Company at its sole expense prior to termination. Company is liable for all damages, including without limitation consequential damages, that Delta suffers in connection with or arising out of Company's failure to return the Premises to Delta in the condition required by this Agreement, and this liability will survive the expiration or earlier termination of this Agreement.

9.5 **Waiver.** Company waives the provisions of any laws of the State of New York with respect to Delta's repair duties and Company's right to repair.

#### **ARTICLE X: LIABILITY, INDEMNITY AND INSURANCE**

10.1 **Indemnity.** To the maximum extent permitted by law, Company shall keep, hold and defend Lessor, Delta, Delta's Concession Manager and all members, directors, officers, agents, servants and employees of Lessor and Delta, harmless from any and all costs, liability, damage or expense (including, but not limited to, cost of suit and expenses of legal services) claimed by anyone (i) by reason of injury to or death of persons or damage or destruction of property sustained in, on or about the Premises, as a proximate result of the acts or omissions of Company, its agents, servants, employees, contractors, suppliers or invitees, or (ii) arising out of

any condition of the Premises, or (iii) arising out of the operations of Company upon or about the Airport, excepting such liability as may result from the sole negligence of Lessor (as to indemnity by Company of Lessor) or Delta (as to indemnity by Company of Delta). Lessor and Delta shall each have the right to defend against any such claim, and if one or both elect to do so, Company shall be responsible for their legal fees, costs and expenses in addition to any resulting liability. Any final judgment rendered against Lessor or Delta for any cause for which Company is liable hereunder shall be conclusive against Company as to liability and amount, where the time for appeal therefrom has expired. This indemnity shall survive termination of this Agreement and shall be in addition to any other indemnity to which any party may be entitled.

**10.2 Liability Insurance.** Company shall at all times during the Term of this Agreement maintain with insurance underwriters satisfactory to Lessor and Delta such liability coverage as Lessor and Delta may from time to time require, in such amount as may be approved by Lessor and Delta, covering Company, Lessor and Delta as their interests may appear, against claims for bodily injury, death and property damage (including, but not limited to, Contractual Liability, Independent Contractors Liability and Products Liability Coverage) occurring on, in or about the Airport. At present the approved minimum coverage amount is at least two million dollars (\$2,000,000) combined single limit covering any one occurrence; provided, however, if Company in its operations uses unescorted motor vehicles on the aircraft ramps, taxiways or runways of the Airport, the amount of motor vehicle and mobile equipment liability and general liability insurance to be furnished by Company shall contain policy limits for bodily injury, death and property damage in the amount of at least ten million dollars (\$10,000,000) combined single limit covering any one occurrence. Company shall maintain Workers' Compensation insurance, including Employer's Liability Insurance, in an amount of not less than one million dollars (\$1,000,000) to cover its employees and consistent with that which may be required from time to time by the State of New York.

**10.3 Insuring Fixed Improvements.** Company, at its own expense, shall insure for all risk coverage all Fixed Improvements on the Premises and such insurance shall be in the amount equal to the full insurance replacement value of such improvements. All insurance policies shall contain loss payable endorsements in favor of Lessor, Delta and Company as their respective interest may appear hereunder. Company, Lessor and Delta agree that any payments received by either from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of said Fixed Improvements. If any such insurance proceeds remain afterward, they shall be paid to Lessor.

**10.4 Additional Insureds.** All policies (except Workers' Compensation) shall include Lessor and Delta and all of their respective officers, employees and agents as additional insureds or loss payees as their interest may appear hereunder. Neither Lessor nor Delta shall have liability for any premiums charged for such coverage, and the inclusion of Lessor and Delta as additional insureds is not intended to, and shall not, make Lessor or Delta a partner or joint venture with Company in Company's operations at the Airport. Such policies shall be for full coverage, with any deductibles or retention subject to approval by Lessor and Delta.

**10.5 Certificates of Insurance; Cancellation; Failure to Maintain Insurance.**

(a) Company shall furnish Lessor and Delta with certificates of such insurance underwriters evidencing existence of valid policies of insurance with the coverage specified, which certificates shall state that the coverage shall not be amended so as to decrease the protection below the limits specified herein or be subject to cancellation without at least thirty (30) days' advance notice to Lessor and Delta. A renewal policy or renewal certificate shall be delivered to

Lessor and Delta at least thirty (30) days prior to a policy's expiration date, except for any policy expiring on the expiration date of this Agreement or thereafter.

(b) In the event Company shall at any time fail to have in effect the insurance required under the provisions of this Agreement, upon written notice to Company of its intention to do so, Delta shall have the right, but not the obligation, to secure the insurance required hereunder at the cost and expense of Company. In the event Company shall at any time fail to furnish Lessor or Delta with the certificate or certificates required hereunder, Delta may, at any time, after fifteen (15) days after the giving of notice to Company of its intention to do so, secure the required insurance. In either event, Company agrees to reimburse Delta for the cost thereof plus fifteen percent (15%) thereof for administrative overhead.

**10.6 Performance and Payment Bonds.** Company shall require that prior to performing any work any contractor or contractors who perform any work permitted under this Agreement furnish separate performance and payment bonds with a good and sufficient surety, acceptable to Delta, each in an amount not less than the full amount of the contract price for completing such work, for the faithful performance of the contract by contractor, guaranteeing the payment of all persons performing labor and furnishing material in connection with the work. Company shall further require the contractor to procure adequate Contractor's General Public Liability, Property Damage Insurance and Workers' Compensation Insurance, including Employer's Liability Insurance, in the amounts indicated in this Article. Company shall, before the commencement of any work, furnish Delta with evidence that the contractor or contractors are covered to the satisfaction of Delta with insurance as outlined above.

**10.7 Performance Guarantee.** In addition to any other bond or security required pursuant to other provisions of this Agreement, Company shall guarantee performance under this contract in accordance with the following provisions:

(a) Prior to the Effective Date, if requested by Delta, Company will provide Delta, at Company's sole cost and expense, with an irrevocable standby letter of credit ("Letter of Credit") or contract surety bond ("Contract Bond") to secure Company's financial guarantees under this Agreement. Such Letter of Credit or Contract Bond shall be in a form and drawn on a banking institution or insurance or surety company acceptable to Delta, all in Delta's sole and absolute discretion. The Letter of Credit or Contract Bond shall be drawn in favor of and deposited with Delta and equal to \$1,090,000 in United States currency. The Letter of Credit or Contract Bond shall be held by Delta.

(b) The Letter of Credit or Contract Bond shall be effective for a one year period. In addition, the Letter of Credit or Contract Bond shall provide for an automatic annual renewal unless the issuing bank, insurance or surety company provides Delta and Company with ninety (90) days advance written notice of its intent not to renew prior to the expiration of the Letter of Credit or Contract Bond. Commitment documents providing for a replacement of the Letter of Credit or Contract Bond shall be received by Delta at least forty-five (45) days prior to expiration.

(c) Company's failure to obtain renewal or replacement of such Letter of Credit or Contract Bond at least forty-five (45) days prior to expiration of its term shall be deemed an event of default.

(d) Documents specifying the letter of credit / contract bond requirements and samples of forms are attached hereto as Exhibit J. Delta shall have the unilateral right to modify the documents comprising Exhibit J at any time by providing written notice to Company.

10.8 **Security.** Company understands and acknowledges that it shall be solely responsible for the security of its property (including without limitation Fixed Improvements, Trade Fixtures and Personal Property) and the property stored or placed therein, whether on the Premises or elsewhere in the Delta Facilities, and that Delta shall not have, nor shall it be deemed to have, assumed any liability, duty or obligation whatsoever with respect to such property. Delta shall have no responsibility to keep the Delta Facilities or the Premises guarded, attended or patrolled at any time. Company shall assume all risks involved in the use of such property and agrees that Delta shall not in any way be responsible for the acts or omissions of any other persons having access to such property. Company hereby releases Delta of and from any claims or demands for loss, theft or damage of or to any of such property.

10.9 **Company's Business.**

(a) **Information.** From time to time, Company may obtain from Delta or third parties the following ("Information"): documents, data or information concerning Delta's business, traffic, enplanements, expectations, estimates, intentions or strategies, including without limitation Delta's trade secrets, confidential information and "forward-looking statements" under the Private Securities Litigation Reform Act of 1995. The Information may involve a number of unforeseeable factors, opinions, risks and uncertainties that could affect Company's business contemplated in this Agreement. Company acknowledges that Delta has no duty to provide any "Information" under this Agreement. In addition, Delta does not represent, warrant or guarantee the accuracy, completeness or relevance of the Information provided to or obtained by Company. Company is not entitled to rely on the Information and shall not hold Delta responsible or liable for any use thereof, but shall instead make its own investigation of matters it deems relevant to its business. Company acknowledges that it has been afforded ample opportunity to inspect the Airport, the Delta Facilities and the Premises and to gather all necessary Information from Delta or third parties concerning Company's business contemplated in this Agreement. Company agrees that it has not relied upon any Information provided to it by Delta other than as set forth in this Agreement and has instead made an independent assessment of the business opportunities arising from this Agreement.

(b) **No Obligation.** Delta does not undertake any responsibilities to increase or otherwise influence Company's revenue or profit, to provide Company with Information that may impact Company's revenue or profit or to update or correct any Information in Company's possession or use.

(c) **Business Levels.** Delta does not predict or guarantee any level of traffic through or near the Premises, the Delta Facilities or the Airport. In the event of a downturn in enplanements or foot traffic through or near the Premises, Company shall continue the operation of its business in the Premises and, except as expressly set forth in Article VII, Company's obligation to make Payments under this Agreement shall remain in full force and effect. Delta does not warrant that the location of the Premises or Company's business efforts will result in any revenue or profit, even if the Payments are computed based upon revenue or profit.

**ARTICLE XI: ASSIGNMENT, DELEGATION AND CHANGE OF OWNERSHIP**

11.1 **Assignment; Use by Others.** Except as may be approved in advance in writing by Delta and Lessor, the privileges contained herein are personal and Company may not, directly or indirectly, either make or permit any of the following (an "Assignment"): an assignment of all or any portion of Company's interest in this Agreement (including assignment by operation of law);

sublease of all or any portion of the Premises; a license, franchise or concession agreement permitting the use of any part of the Premises by another; a sale, assignment, pledge or other transfer of shares of stock, partnership interests or other ownership interest in Company or any guarantor of this Agreement resulting in a change in the effective control of Company or the guarantor (except that the sale of stock of a corporation that is Company or a guarantor will not constitute an Assignment if the stock of such corporation, both before and after the sale, is traded on a national securities exchange registered with the United States Securities and Exchange Commission); a sale, assignment, pledge or other transfer of an aggregate of more than 25% of the business assets of Company or any guarantor; a management or other agreement or arrangement under which Company permits any person either to direct, manage or control the day-to-day operations of the business operated at the Premises or to participate in the income or profits derived from the Premises; a mortgage, hypothecation, pledge or other grant of a security interest in this Agreement; or an attachment, execution or other lien upon Company's rights or interest under this Agreement. No reference in this Agreement to subtenants, licensees or concessionaires or any other provision of this Agreement is intended or may be construed to permit Company to make any Assignment. No Assignment is permitted unless Company obtains the prior written consent of Lessor and Delta, which consent may be withheld in the sole discretion of Lessor and Delta.

11.2 **Delta Options.** Any attempted or purported Assignment made without the prior written consent of Delta and Lessor, either voluntary or involuntary or by operation of law or otherwise, is void and will, at Delta's option, terminate this Agreement. The voluntary or other surrender of this Agreement by Company, or the mutual cancellation or termination of this Agreement by Company and Delta, will not work a merger but will, at the option of Delta, either terminate any and all existing franchises, concessions, licenses, subleases and other operating arrangements or operate as an assignment to Delta of the same.

11.3 **Delta's Failure to Consent.** Delta reserves the right to deny any assignment, subcontract or transfer of ownership for any reason it deems in the best interest of Delta.

11.4 **Acceptance of Payments.** The acceptance of Payments by Delta or Lessor from any person or entity does not constitute a waiver by Lessor or Delta of any provision of this Agreement or a consent to any Assignment. Lessor's or Delta's consent to one Assignment will not be deemed to be a consent to any subsequent Assignment. If Company defaults in the performance of any of the terms of this Agreement, Delta may proceed directly against the transferor (or if there has been more than one Assignment, then each transferor) without necessity of exhausting remedies against Company. Lessor and Delta may consent to subsequent Assignments or amendments or modifications to this Agreement with transferees, without notifying transferor (or if there has been more than one Assignment, then each transferor) and without obtaining its or their consent thereto and such action shall not relieve any transferor of liability under this Agreement as amended.

11.5 **Waiver.** Company waives the provisions of New York law with respect to remedies available to Company should Delta and Lessor fail to consent to an Assignment.

## **ARTICLE XII: DAMAGE OR DESTRUCTION OF PREMISES**

12.1 **Notice; Options.** If all or a portion of the Premises are damaged or destroyed by fire, explosion, the elements, or other casualty, at the sole option of Delta, such affected Premises may be repaired or reconstructed at no cost to Company, subject to the limits of Lessor's and Delta's obligations set forth below. Delta shall notify Company within ninety (90) days of such

occurrence of Delta's intent to repair or reconstruct or not to repair or reconstruct; provided, however, if said damage is caused by the negligent or wrongful act or omission to act of Company, its agents or employees, and Delta elects to repair or reconstruct, Company shall be responsible for reimbursing Delta for the cost and expense incurred in such repair, subject to the same limits.

**12.2 Destruction.** In the event all or a portion greater than fifty percent (50%) of the Premises, excluding storage space, is completely destroyed by fire, explosion, the elements, public enemy or other casualty, or are so damaged that they are untenable and notice of intent not to repair or reconstruct has been issued, Company may cancel this Agreement in its entirety as of the date of such destruction. Notwithstanding the foregoing, if such destruction is a result of the negligent or wrongful act or omission to act of Company, its agents or the employees of either, Company shall not have the right to cancel this Agreement and Delta may, in its discretion, require Company to repair and reconstruct the Premises within six (6) months of such destruction and pay the cost therefore.

**12.3 Limits of Lessor's and Delta's Obligations.** It is understood that, in the application of the foregoing provisions, Lessor's and Delta's obligations shall be limited (i) to repair or reconstruction of the Premises to the same extent and of equal quality as existed when the damaged portion of the Premises was delivered to Company; and (ii) to the extent of insurance proceeds available to Lessor or Delta for such purposes. The repair, replacement and restoration of Fixed Improvements, Trade Fixtures, Personal Property, redecoration and replacement of furniture, equipment and supplies shall be the sole responsibility of Company and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

**12.4 Damage to Delta Facilities.** If (a) a casualty damages any of Terminal D, Terminal C East End or Terminal C Shuttle to the extent of not less than one-quarter of such terminal's replacement cost and that casualty is not covered under a Basic Form property insurance policy, or (b) a casualty damages any of Terminal D, Terminal C East End or Terminal C Shuttle to the extent of not less than one-half of such terminal's replacement cost, then, in either case, Delta may terminate this Agreement as to the Premises within such damaged terminal by notice to Company. Delta shall make its election under this Section within 90 days after the date of the casualty. Delta may exercise its termination rights under this Section regardless of whether the Premises were damaged by the casualty. If Delta exercises its termination rights under this Section, then this Agreement will terminate as to the affected portions of the Premises on the date specified in Delta's notice, which date will be no later than 30 days after the date of Delta's notice. In such event, if Company is not in default under this Agreement, Delta shall buy out or cause the buyout of Company's Fixed Improvements in such Premises at those Fixed Improvements' Net Book Value at the time of the termination.

**12.5 No Abatement.** If a casualty damages any part of the Delta Facilities or the Airport, including the Premises, Company shall continue the operation of its business in the Premises following the casualty and during any period of repairs and restoration to the extent reasonably practicable from the standpoint of prudent business management, and Company's obligation to make Payments under this Agreement will remain in full force and effect. Company is not entitled to any compensation or damages from Delta or Lessor for loss of the use either of the whole or any part of the Premises, the Delta Facilities or the Airport or of Company's Personal Property and Company is not entitled to any compensation or damages from Delta or Lessor for any inconvenience, annoyance or damage occasioned by any casualty or the repair, reconstruction or restoration of the damage caused by the casualty.

12.6 **Statutory Waiver.** Company hereby waives all statutory or common law rights of termination by reason of any partial or total destruction of the Premises, including without limitation any that provide for termination of hiring upon destruction of the thing hired.

### **ARTICLE XIII: COMPLIANCE**

13.1 **General Requirements.** Notwithstanding any other provision of this Agreement, Company, its officers, agents, servants, employees, contractors, licensees and any other person over which Company has the right to control shall comply with all present and future laws, ordinances, orders, directives, codes, rules and regulations of the federal, state and local governmental agencies, including Lessor, which may be applicable to any or all of its or their constructions, repairs, concessions or other activities or operations at the Airport, under this Agreement or otherwise.

13.2 **Taxes; Licenses and Permits.** Company shall pay, or in good faith contest, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon the Premises, or upon Company, or upon the business conducted at the Airport, or upon Company's interest hereunder, or upon any of Company's property used in connection therewith; and shall have and maintain in current status and in good standing all federal, state and local licenses, permits and authorizations required for the operation of the business conducted by Company.

13.3 **Fines and Penalties.** Company agrees to pay when due all fines and penalties as may be assessed by or against Lessor, Delta, Company or any of the parties hereinafter referenced in this provision for violations of federal, state or local laws, ordinances, rulings or regulations, or Airport rules and regulations by Company or its officers, agents, servants, employees, contractors, licensees or any other person over which Company has the right to control. If for any reason Lessor or Delta pays any such fine or penalty, Company shall reimburse the party who made such payment within thirty (30) days of written notice of such payment.

13.4 **Safe Operation; No interference with Airlines.** Company will operate its concession hereunder in a safe manner and without interfering with Delta's or other airlines' use of Delta Facilities, for themselves and for their passengers and other business invitees.

13.5 **Advertising.** Company shall not advertise an individual airline's transportation services or other goods or services offered in connection therewith on or in the Premises, without the prior written approval of Delta and Lessor, which approval may be withheld in the sole discretion of Lessor and Delta.

13.6 **Matters Relating to Service of Alcoholic Beverages.** For any part of the Premises where alcoholic beverages are sold or served, the Company shall have the unfettered right and obligation to deny such alcoholic beverage service to any individual in the event that the person becomes unruly or visibly intoxicated. For any part of the Premises where alcoholic beverages are sold or served, the Company shall have the unfettered right and obligation to contact the Port Authority Police to arrange for the removal of any patron that becomes unruly or intoxicated or is violating any law or regulation. The Company shall have the sole right to hire, fire or discipline any of its employees engaged at any Premises subject to a New York State Liquor Authority issued license.

#### **ARTICLE XIV: TERMINATION BY COMPANY**

14.1 **Termination.** Company may terminate this Agreement by giving a thirty (30) day written notice to Delta, should any one or more of the following events occur, provided however, that none of the unamortized capital improvements or the compensation and fees which have been paid by Company herein will be refunded to Company:

(a) the permanent removal of all certified passenger airline service from the Delta Facilities;

(b) The assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof in such manner as to substantially and adversely restrict Company from operating thereon for a period of at least ninety (90) days; or

(c) The issuance by any court of competent jurisdiction of any injunction permanently preventing or restraining the use of the Airport in such a manner as to substantially restrict Company from conducting its operations hereunder; which prevention or restraint is not caused by the act or omission of Company or a person or entity for whom Company is responsible under this Agreement and which injunction remains in force for at least ninety (90) days.

14.2 **Termination for Delta Default.** Company may terminate this Agreement in the event of a substantial breach by Delta in the performance of any material covenant of this Agreement required to be performed by Delta and the failure of Delta to commence to remedy such breach within thirty (30) days after receipt of notice of such breach by Delta and to diligently pursue such remedy of breach to completion. In the event of a termination for default by Delta as provided in this Section, or if this Agreement is otherwise terminated due to the termination or cancellation of the Terminal Leases as a result of a default by Delta thereunder, or as a result of the surrender of the lessee interest under the Terminal Leases, whether voluntary or involuntary or by operation of law, or as a result of the exercise of the power of sale under any mortgage or deed of trust encumbering the real property of which the Premises are a part, Delta shall buy out or cause the buyout of Company's unamortized Fixed Improvements in the Premises at the Fixed Improvement's Net Book Value as liquidated damages. Delta and Company agree that such liquidated damages specified in this Section are a reasonable estimate thereof. Payment of such amounts shall be Company's sole remedy for a termination of this Agreement arising under this Section.

14.3 **Liability of Delta.** Notwithstanding any other provision of this Agreement to the contrary, no director, employee, officer, agent, representative, shareholder, or ultimate beneficial owner, in each case whether direct or indirect, of Delta or of any of the foregoing shall be charged personally or held contractually liable by or to the other party, or any third-party beneficiary hereof, under, or in connection with, any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution. The sole recourse of Company (or its successors or assigns) under this Agreement and any third party beneficiary hereof shall be against Delta's assets irrespective of any failure of Delta to comply with applicable laws or any provision of this Agreement. Notwithstanding anything to the contrary in this Agreement, in no event will Delta or Lessor be liable to Company or any person or entity related to Company for any consequential, incidental or special damages, lost revenues or lost profits.

**14.4 Effect of Transfer.** If during the Term, Delta sells or assigns its interest in the Delta Facilities or the Premises, then from and after the effective date of sale, Delta will be released and discharged from any and all obligations and responsibilities under this Agreement except those already accrued. If any security is given by Company to secure the faithful performance of all or any of the covenants of this Agreement on the part of Company, then Delta may transfer and/or deliver the security, as such, to the purchaser of Delta's interest under this Agreement, in the event that its interest be sold, and thereupon Delta shall be discharged from any further liability in reference thereto. Notwithstanding anything to the contrary contained in this Agreement, Delta covenants and agrees that Delta will not terminate or surrender, whether voluntary or involuntary or by operation of law, its interest in any one of the Terminal Leases or Delta Facilities. In the event Delta terminates or surrenders, whether voluntary or involuntary or by operation of law, its interest in any one of the Terminal Leases or Delta Facilities prior to the expiration of the term of this Agreement (with respect to those portions of the Premises affected by such termination or surrender) and the Company is not permitted by the Lessor or its lessee to continue to operate concessions in those portions of the Premises affected by such termination or surrender on substantially similar terms as such concessions are operated pursuant to this Agreement, Delta shall reimburse Company for the unamortized portion of its Initial Capital Investment in those portions of the Premises. In the event Delta voluntarily assigns its interests in one or more, but not all, of the Terminal Leases and/or Delta Facilities, the parties agree that this Agreement shall be bifurcated and shall continue (with equitable adjustments to Payments provisions in the event of a transfer of only one of the Terminal C East End Lease and Terminal C Shuttle Lease) (a) as between the Company and Delta for the Premises contained in the those portions of the Delta Facilities retained by Delta and (b) as between the Company and Delta's assignee for the Premises contained in the those portions of the Delta Facilities transferred or assigned by Delta. The parties agree to execute, acknowledge, and deliver all such additional agreements, documents and instruments and take all such further action, at their own expense, as are reasonably necessary in order to further effectuate the intent of the foregoing.

#### **ARTICLE XV: TERMINATION BY DELTA**

**15.1 Termination - Events of Default.** In addition to all other remedies otherwise available to Delta under the provisions of this Agreement or at law or in equity, Delta may terminate this Agreement or may, without terminating this Agreement, take possession of the Premises by giving a ten (10) day written notice to Company, should any one or more of the following events of default occur:

(a) Company fails to cooperate with any inspection of books and records, fails to maintain its books and records as required hereunder and said failure is not cured within fifteen (15) business days of written notice thereof;

(b) An Assignment occurs without the prior written consent of Delta and Lessor;

(c) Company's failure to be open for business in any portion of the Premises when required under this Agreement;

(d) Except for the defaults specified in other Subsections, Company shall neglect or fail to perform and observe any promise, covenant or condition set forth in this Agreement within fifteen (15) days of the giving of written notice of breach from Lessor or Delta, except where fulfillment of such obligation requires activity over a period of time and Company has commenced

to perform whatever may be required within fifteen (15) days after giving of such notice and continues such performance without interruption;

(e) Any deterioration of service for a period which, in the sole opinion of Delta, materially and adversely affects the operation of service required to be performed by Company under this Agreement and such service is not restored to the required level and quality contemplated hereunder within ten (10) business days of written notice from Delta to Company thereof;

(f) Delta or Delta's interest and control of the Premises is substantially reduced;

(g) Company or a principal of Company is convicted of a felony;

(h) Company fails to make Payments when due, or to make any other payment required under this Agreement when due, and that failure continues for five (5) days after written notice of default from Delta to Company. Notwithstanding the foregoing, if two events of default in Payments occur during the Term, then thereafter (i) Company will not be entitled to, and Delta will have no obligation to give, notice of any further failures to make Payments when due and (ii) an event of default will be deemed to occur immediately upon any subsequent failure by Company to make Payments required under this Agreement when due;

(i) Company fails to provide the letter of credit or other performance guarantee required under Article VII or fails to maintain the same at all times during the Term of this Agreement, and that failure continues for a period of more than three days after written notice from Delta to Company;

(j) Company fails to obtain and maintain the insurance required under this Agreement or to provide copies of the policies or certificates to Delta as required under this Agreement and that failure continues for a period of more than five (5) days after written notice from Delta to Company;

(k) Any lien is filed against the Premises arising by or through Company or because of any act or omission of Company, a Company's contractor, supplier or anyone else for whose actions Company is responsible and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ten (10) business days after the filing thereof;

(l) Company abandons, deserts, vacates or discontinues its operation of the business at the Premises herein authorized for a period of three (3) days without prior written consent of Delta;

(m) Company files for bankruptcy; Company has an involuntary bankruptcy petition filed against it which is not dismissed within sixty (60) days; Company is adjudged as bankrupt; makes an assignment for the benefit of creditors; becomes insolvent or is otherwise unable to pay its obligations as they come due; or seeks appointment of a receiver or one is otherwise appointed with respect to Company or a substantial portion of its property;

(n) Company sells Unauthorized Items or otherwise violates the restrictions on use provided in Article IV and fails to cease within 24 hours after written notice from Delta to Company thereof.

(o) Company fails a third time during any twelve month period of the Term to observe and perform the same provision of this Agreement for which two default notices have previously been sent by Delta during that twelve month period. This provision is intended to protect Delta from habitual breaches of this Agreement by Company.

Notwithstanding anything to the contrary in this Agreement, any written notice, other than as specifically set forth in this Agreement, required by any statute or law now or hereafter in force is hereby waived by Company to the fullest extent available under law. Any notice given by Delta pursuant to this Section may be the notice required or permitted pursuant to applicable statute, and the provisions of this Agreement will not require the giving of a notice in addition to the statutory notice to terminate this Agreement and Company's right to possession of the Premises. The periods specified in this Section within which Company is permitted to cure any default following notice from Delta will run concurrently with any cure period provided by applicable statutes.

**15.2 No Waiver.** The waiver by Delta of any breach of any provision of this Agreement will not be deemed to be a waiver of such provision or any subsequent breach of the same or any other term, covenant or condition therein contained. Acceptance by Delta of any Payments specified herein, after a breach of any of the terms of this Agreement, shall not be deemed a waiver of any right of Delta with respect to each breach, including but not limited to, Delta's right to terminate this Agreement on account of such breach.

**15.3 Reentry; Disposition of Trade Fixtures/Personal Property.** On or before the recapture or termination dates set forth in the written notice by Delta to Company as set out in Articles II and XV respectively, Company shall surrender the Premises. Delta may reenter the Premises and may remove all persons and property from same upon the date of reentry. Upon any removal of Company's Trade Fixtures and Personal Property by Delta hereunder, at the sole option of Delta, (i) said property may be stored at a public warehouse or elsewhere at Company's sole cost and expense; or (ii) title to such Trade Fixtures and Personal Property shall vest in Delta at no cost to Delta.

**15.4 Reassignment of Premises.** In the event Delta reenters the Premises or terminates this Agreement in accordance with the provisions of this Agreement, Delta may reassign the Premises and any improvements thereon to any part thereof to be operated by one or more operators or any other party acceptable to Delta, at such rentals, fees and charges and upon such other terms and conditions as Delta, in its sole discretion, may deem advisable, with the right to make alterations, repairs or improvements on the Premises.

**15.5 Termination Not Implied.** No reentry or reassignment of the Premises by Delta shall be construed as an election on Delta's part to terminate this Agreement unless a written notice of termination is given to Company.

**15.6 Survived Obligations.**

(a) In the event that Delta terminates this Agreement or reenters, regains, reassumes possession of or reassigns the Premises, all the obligations of Company under this Agreement shall survive and remain in full force and effect for the full Term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to Delta and Lessor to the same extent, at the same time or times and in the same manner as if no termination, reentry or reassignment had taken place.

(b) The amount of damages for the period of time subsequent to termination, re-entry, regaining or resumption of possession or reassignment shall be the sum of the following:

1. The Minimum Annual Payment, if any; provided, that for each Year that otherwise would have remained in the Term of this Agreement, the Minimum Annual Payment shall, for this purpose, be deemed to be the Minimum Annual Payment for the Year in which this Agreement is terminated or Delta re-enters, regains or reassumes possession or reassigns the Premises, whichever occurs first;
2. The Additional Payments, if any; and
3. An amount equal to all expenses reasonably incurred by Delta in connection with regaining possession and restoring and reletting the Premises, for legal expenses, putting the Premises in order including, without limitation, cleaning, decorating and restoring, maintenance and brokerage fees.

(c) Without limiting any of the foregoing, Delta or Lessor may at any time bring an action to recover all the damages as set forth above not previously recovered in separate actions, or it may bring separate actions to recover from time to time such portion of the damages as would have accrued up to the time of the action if there had been no termination or reentry. In any such actions Company shall be allowed a credit against its survived damage obligations equal to the amounts which Delta and Lessor shall have actually received from any Delta subtenant, licensee or permittee of the Premises or a part thereof during the period for which damages are sought; provided, however, that said credit for such period shall not exceed any Minimum Annual Payment Company would have owed Delta and Lessor for that period.

(d) In addition to and without limiting the foregoing or any other right, claim or remedy of Delta or Lessor, in the event this Agreement shall be terminated pursuant to Article XV hereof and Company shall not have completed any of the construction or refurbishment obligations as defined in Article VIII hereof, or any portion thereof, Company shall and hereby agrees to pay to Delta any and all amounts, costs or expenses, of any type whatsoever, paid or incurred by Delta by reason of the failure of Company to complete the construction and refurbishment obligations, or any portion thereof, including all interest, costs, damages, losses and penalties, and all of the same shall also be deemed treated as survived damages hereunder in addition to the foregoing.

**15.7 Return of Premises to Delta.** Unless otherwise directed by Delta, at termination of this Agreement by expiration, cancellation or otherwise, Company shall immediately remove all Trade Fixtures and Personal Property from the Premises of Company and return such Premises in good condition, reasonable wear and tear excepted. Any and all Trade Fixtures and Personal Property of Company not removed by Company at the date of termination of this Agreement by expiration, cancellation or otherwise will, at the option of Delta, irrevocably become the sole property of Delta. Company waives all rights to notice and all common law and statutory claims and causes of action which it may have against Delta subsequent to that date as regards the storage, destruction, damage, loss of use and ownership of Trade Fixtures and Personal Property affected by the terms of this Section.

**15.8 Delta's Right to Cure Default.** Company shall perform, at Company's sole cost and expense, all covenants and agreements to be performed by Company under the terms of this Agreement and without any abatement of Payments. If Company fails to pay any sum of money required to be paid by Company under this Agreement or defaults in the performance of

any other act on its part to be performed under this Agreement, then Delta may, but is not obligated to do so, and without waiving or releasing Company from any obligation, make the payment or perform any other act on Company's part to be made or performed as provided in this Agreement. All sums so paid by Delta and all necessary incidental costs will be deemed Additional Payments under this Agreement and will be due and payable to Delta immediately.

**15.9 Remedies Cumulative.** The various rights, options, elections, powers and remedies of Delta contained in this Article and elsewhere in this Agreement are cumulative and no one of them is exclusive of any others or of any legal or equitable remedy which Delta might otherwise have in the event of breach or default, and the exercise of one right or remedy by Delta will not in any way impair its right to any other right or remedy.

**15.10 Bankruptcy.** Company agrees that if (i) all or substantially all of Company's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of 60 days, or (ii) Company makes an assignment for the benefit of creditors or is finally adjudicated a bankrupt, or (iii) Company institutes any proceedings under the Bankruptcy Code as the same now exists or under amendment thereto which may hereafter be enacted, or under any other act relating to the subject of bankruptcy, including any proceeding in which Company seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition, extension or reorganization, or (iv) any involuntary proceeding is filed against Company under any such bankruptcy laws and such proceeding is not removed within 60 days thereafter, then the same will be and constitute a default under this Agreement and any interest of Company in and to the Premises will not become an asset in any of such proceedings. In any such event and in addition to any and all rights and remedies of Delta under this Agreement or at law, it will be lawful for Delta to declare the Term ended and to reenter the Premises and take possession of the Premises and remove all persons therefrom, and Company will have no further claim on the Premises or under this Agreement. Delta also has the rights set forth in this Section in the event that any of the events specified above occur with respect to any guarantor of this Agreement. The Additional Payments payable under this Agreement includes all of the reasonable attorneys' fees and costs paid or incurred by or on behalf of Delta if Delta, in any bankruptcy, insolvency or other similar proceeding, takes action to protect, preserve or assert Delta's rights or interests, either as relating to this Agreement or any other lease, agreement or arrangement pertaining to the Airport., or in and to the bankruptcy or insolvency proceedings. That Additional Payments will be included within the actual pecuniary loss for which Delta is required to be compensated in connection with any assumption, or assumption and assignment, of this Agreement in any such proceeding. Within fifteen days after request by Delta, Company shall supply to Delta financial statements of Company and any guarantor of this Agreement prepared by an independent certified public accountant in accordance with generally accepted accounting principles, consistently applied, and accurately reflecting the financial condition of Company and any guarantor.

**15.11 Delta Lien.** Company hereby agrees that Delta shall have the benefit of any common law or statutory right of distraint with respect to all goods, inventory, equipment, trade fixtures, and all personal property belonging to Company which are or may be put into the Premises during the Term and all proceeds of the foregoing (collectively, the "Liened Property").

## **ARTICLE XVI: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

### **16.1 General Policy.**

(a) It is the policy of Lessor and Delta that ACDBEs, as defined in 49 CFR Part 23, shall have the maximum opportunity to share in the benefits from concession opportunities at the Delta Facilities. An “ACDBE” is a business entity, whether a sole proprietorship, partnership, joint venture or corporation of which at least fifty-one percent (51%) of the interest is owned and controlled by a “socially and economically disadvantaged individual” as such term is defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant thereto at 49 CFR Part 23. ACDBEs shall meet the experience and economic guidelines set forth in 49 CFR Part 23 and be certified by Lessor. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, African Americans, Hispanics, Asian and Pacific Islanders, American Indians or Alaskan Natives.

(b) In order to provide a fair opportunity for ACDBE participation under this Agreement, Delta requires that Company provide for a level of ACDBE participation in the concession privileges granted herein equal to or greater than seventeen percent (17%) of the gross revenues and/or purchases (as applicable) generated from the Premises, provided however that Company shall not be required to achieve the ACDBE Participation goal prior to completing construction of all of the Permanent Concession Sites. This participation level can be met through any of the following arrangements:

1. Sublease a portion of the Premises for operation by a qualified ACDBE, approved by Delta and Lessor.
2. Joint Venture arrangement between Company and a qualified ACDBE, approved by Delta and Lessor.
3. The purchase of goods and services from a qualified ACDBE operator approved by Delta and Lessor.
4. A combination of any of the foregoing.

(c) If Company fails to achieve and maintain the level of participation required herein, Company shall be required to provide adequate documentation demonstrating that it made good faith efforts, as defined in Appendix A of 49 CFR Part 23, in its attempt to meet the required ACDBE participation level.

(d) Company further agrees that if a portion of the Premises is subleased to an ACDBE operator, the ACDBE shall assume responsibility for the operation; and Company shall provide ACDBE operator with logistical, financial and service support as may be reasonably requested. Company fees associated with these services, if any, shall not exceed the actual cost of said services.

(e) Except as provided in the immediately preceding Section, in no event will the ACDBE operator be required to pay Company rentals, fees or charges greater than those provided in Article VII herein.

**16.2 Company Remains Responsible.** Notwithstanding the provisions of this Article XVI, Company shall at all times continue to be fully responsible to Lessor and Delta for the

performance of the terms and conditions of this Agreement, specifically including, but not limited to, the requirements with reference to design and construction contemplated hereunder, the requirements with reference to refurbishing of the Premises hereunder, the quality and prices of all items anticipated to be furnished hereunder, and all Payments required to be made hereunder.

**16.3 ACDBE Replacement.** Company shall assure that in the event any ACDBE partner, joint venture and/or Suboperator withdraws as a participant, such entity shall be replaced by a qualified and certified ACDBE within one hundred-twenty (120) days of such withdrawal. Delta shall have the right to approve any such replacement ACDBE and its agreement with Company. In the event that any ACDBE partner, joint venturer or Suboperator shall be disqualified as a certified ACDBE, for any reason (other than by reason of exceeding the then current personal net worth limitations), pursuant to the then applicable federal regulations regarding Disadvantaged Business Enterprise qualifications, Company shall immediately terminate such arrangement and replace such ACDBE with a certified ACDBE within one hundred-twenty (120) days of such termination.

## **ARTICLE XVII: GOVERNMENTAL PROVISIONS**

### **17.1 Nondiscrimination.**

(a) Company, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person, on the grounds of race, color, creed, national origin, sex, age or handicap shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements and the furnishing of services, no person on the grounds of race, color, creed, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that Company shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and any other present or future laws, rules, regulations, orders or directions of the United States of America with respect thereto which from time to time may be applicable to Company's operations thereat, whether by reason of agreement between Lessor and the United States government or otherwise.

(b) That in the event of breach of any of the above nondiscrimination covenants, Delta shall have the right to cancel this Agreement and reenter and repossess the Premises, and hold the same as if this Agreement had never been made or issued.

(c) Company shall furnish its accommodations and/or services on a fair, equal and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable and nondiscriminatory prices for each unit of services, however, Company may make reasonable discounts, rebates and other similar types of price reductions to its employees and, with Delta's and Lessor's approval, to other individuals employed by Delta, the Lessor or otherwise at the airport.

(d) Company assures that it shall undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any employment activities covered in 14 CFR Part 152 Subpart E. Company assures that no person

shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Company assures that it shall require that its covered suborganizations provide assurances to Company that they similarly shall undertake affirmative action programs and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(e) Company assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates Company for the period during which federal assistance is extended to the Airport program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates Company or its transferee for the longer of the following periods:

1. the period during which property is used by Delta or any transferee for a purpose for which federal assistance is extended or for another purpose involving the provision of similar services or benefits; or
2. the period during which Delta or any transferee retains ownership or possession of the property.

(f) Company's noncompliance with the provisions of this Article XVII shall constitute a breach of this Agreement. In the event of the breach by Company of any of the above non-discrimination provisions, Lessor and Delta may take any appropriate action to enforce compliance; or in the event such noncompliance shall continue for a period of ten (10) business days after receipt of written notice from Lessor or Delta, Delta shall have the right to terminate this Agreement and the letting hereunder with the same force and effect as a termination under Article XV providing for termination for default by Company in the performance or observance of any other term or provision of this Agreement, or may pursue such other remedies as may be provided by law; and as to any or all of the foregoing, Lessor and Delta may take such action as the United States may direct.

(g) As used herein, the term "Department of Transportation" means the United States Department of Transportation.

**17.2 Disabled Access.** Company will be solely responsible for fully complying with any and all applicable present and future rules, regulations, restrictions ordinances, statutes, laws and orders of any Federal, State and local government entity and court regarding disabled access to improvements on the Premises. Company shall be solely responsible for any and all fines or damages caused by and/or penalties levied as a result of non-compliance. Further, Company agrees to fully cooperate with Delta and Lessor in their efforts to comply with the Americans with Disabilities Act of 1990.

**17.3 Federal Aviation Act, Section 308.** Nothing herein contained shall be deemed to grant Company any exclusive right or privilege within the meaning of section 308 of the Federal Aviation Act or the conduct of any activity on the Airport, except that, subject to the terms and conditions hereof, Company shall have the right to use the Premises under the provisions of this Agreement.

17.4 **Supplier Diversity.** Company acknowledges that (i) Delta is committed to enhancing business opportunities for small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business enterprises (collectively, "Small Business") as first and second tier suppliers to Delta, and (ii) Delta believes that every reasonable attempt should be made to include and utilize Small Business supplier firms as suppliers to Delta, as long as they are competitive on price, quality and service, and provide the best overall value for Delta. Company agrees to cooperate with Delta to achieve the general objective of including Small Business supplier firms as suppliers to Delta, in accordance with the guidelines described in clause (ii) above, and to use all commercially reasonable efforts to include Small Business supplier firms in its procurement process. Upon request, Company shall complete and submit to Delta a Supplier Diversity Quarterly Utilization Report, in such format as Delta may reasonably specify.

#### **ARTICLE XVIII: ENTRY BY DELTA**

18.1 **Entry by Delta.** Delta and Delta's representatives may enter the Premises at all reasonable times for the purpose of (i) inspecting the Premises, (ii) assessing Company's compliance with its obligations under this Agreement, (iii) showing the Premises to prospective tenants or other interested parties, (iv) performing maintenance, (v) remeasuring the Premises, (vi) making repairs, installations, alterations or additions, (vii) posting notices of non-responsibility and (viii) any other lawful purpose necessary or appropriate in connection with the operation of the Airport or the Delta Facilities as determined by Delta in Delta's sole discretion. Delta in connection with Delta's exercise of its rights to enter the Premises may erect and maintain scaffolding, canopies, fences and props in and around the Premises. Such entry by Delta will not constitute a forcible or unlawful entry into or a detainer of the Premises, nor an eviction, actual or constructive, of Company from the Premises nor will Company be entitled to any abatement or reduction in Payments, except as hereinafter set forth. In no event will Delta be liable to Company for any loss of occupation or quiet enjoyment of the Premises caused by such entry. Delta will give reasonable prior notice of its entry into the Premises unless, in Delta's sole discretion, prior notice is either inappropriate or impractical such as emergencies or when Delta is entering to assess Company's compliance with the requirements of this Agreement. Delta agrees to use reasonable efforts to minimize any disruption to Company's business caused by its entry into the Premises. This Section in no way affects the maintenance and repair obligations of the parties hereto. In the event that all use and/or occupancy of a portion of Company's Premises (excluding any common seating areas within the Premises) is prevented by Delta's exercise of its right of entry hereunder for a period that extends beyond three (3) business days, then Company shall be entitled to an abatement of any Minimum Annual Payment in the form of a credit. Such credit will be determined by the following formula:

$$\frac{\text{Minimum Annual Payment}}{365} \times (\text{square footage affected by Delta entry} / \text{Floor Area}) \times (\text{the number of days that Company's use and occupancy of the Premises is affected} - 3).$$

#### **ARTICLE XIX: SUBORDINATION**

19.1 **Subordination.** This Agreement is automatically subject and subordinate to any ground lease, mortgage, deed of trust or any other hypothecation for security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, amendments, modifications, consolidations, replacements and extensions thereof. If any mortgagee, trustee or ground lessor elects to have

this Agreement prior to the lien of its mortgage, deed of trust or ground lease, and gives written notice thereof to Company, then this Agreement will be deemed prior to such mortgage, deed of trust or ground lease, whether this Agreement is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof. Company agrees to execute any documents required to effectuate such subordination or to make this Agreement prior to the lien of any mortgage, deed of trust or ground lease, as the case may be, and failing to do so within ten days after written demand, does hereby make, constitute and irrevocably appoint Delta as Company's attorney in fact and in Company's name, place and stead, to do so. Company acknowledges that Company's failure to deliver documents as provided in this Section constitutes a material default of this Agreement and Delta may exercise any of the remedies specified in Article 15 hereof in such event. It is understood by all parties that Company's failure to execute the subordination documents referred to above may cause Delta serious financial damage by causing the failure of a financing or sale transaction. Company is liable for consequential damages in such event. Company shall attorn to any purchaser at any foreclosure sale, or to any grantee or transferee designated in any deed given in lieu of foreclosure.

19.2 **Attornment.** If at any time during the Term of this Agreement, the Terminal Leases are canceled or otherwise terminated prior to the expiration of the Term of this Agreement, or in the event of the surrender of the lessee interest under the Terminal Leases, whether voluntary or involuntary or by operation of law, immediately upon the request by the Lessor, Company shall make full and complete attornment to the Lessor under such Terminal Leases for the balance of the Term of this Agreement upon the same covenants and conditions as are contained herein so as to establish direct privity between the Lessor under the Terminal Leases and Company and with the same force and effect as though this Agreement was made directly from the Lessor and Company. Company shall thereafter make Payments identified hereunder directly to the Lessor. If at any time during the Term of this Agreement, the Terminal Leases are canceled or otherwise terminated prior to the expiration of the Term of this Agreement, or in the event of the surrender of the lessee interest under the Terminal Leases, whether voluntary or involuntary or by operation of law, and the Lessor does not request that Company attorn under the foregoing provisions of this Section, then this Agreement will, upon notice to Company from the Lessor terminate. If any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust encumbering the real property of which the Premises are a part, or if Delta sells, conveys or otherwise transfers its interest in the Premises, Company shall attorn to the purchaser upon any foreclosure or sale and recognize the purchaser under this Agreement, provided that the purchaser acquires and accepts the Premises subject to this Agreement. If Company is required to attorn to a new lessor under the terms of this Section, then Company agrees to execute an instrument in writing reasonably satisfactory to the new lessor whereby Company confirms its attornment to the successor lessor and recognizes the successor lessor as the lessor under this Agreement. In the event at least one, but not all of the Terminal Leases is canceled or otherwise terminated prior to the expiration of the Term of this Agreement, or in the event of the surrender of the lessee interest under at least one, but not all of the Terminal Leases, whether voluntary or involuntary or by operation of law, the parties agree that this Agreement shall be bifurcated and shall continue (with equitable adjustments to Payments provisions in the event of a termination of only one of the Terminal C East End Lease and Terminal C Shuttle Lease) (a) as between the Company and Delta for the Premises contained in those portions of the Delta Facilities retained by Delta and (b) upon the Lessor's request for attornment, as between the Company and the Lessor for the Premises contained in the those portions of the Delta Facilities covered by the canceled or terminated Terminal Lease(s). The parties agree to execute, acknowledge, and deliver all such additional agreements, documents

and instruments and take all such further action, at their own expense, as are reasonably necessary in order to further effectuate the intent of the foregoing.

**19.3 Estoppel Certificates.** Within fifteen days after Delta's request, Company shall provide a written statement substantially in the form and content as requested by Delta, or as required by Delta's lender, ground lessor or purchaser, acknowledging the commencement and expiration dates of this Agreement, that this Agreement is in full force and effect, has not been modified (or if it has, stating such modifications), and providing all other pertinent information as Delta or its lender, ground lessor or transferee may request. Company's failure to comply with Delta's request under this Section in a timely manner constitutes a material default, giving Delta all rights and remedies under Article XV, as well as the right to damages caused by the loss of a loan or sale which may result from such failure by Company. If Delta desires to sell, finance or refinance the Delta Facilities of which the Premises form a part, Company agrees to deliver to any lender or purchaser designated by Delta such financial statements of Company as may be reasonably required by such lender or purchaser. Such statements shall include the past three years' financial statements of Company.

**19.4 Lessor and Mortgagee Protection.**

(a) Company agrees to give each lender the security for whose loan encumbers the Premises or the Delta Facilities and Lessor by certified mail, return receipt requested, a copy of any notice of default served upon Delta, provided that prior to such notice Company has been notified, in writing (by way of Notice of Assignment of Rents and Leases, or otherwise), of the address of such lenders and/or Lessor. Company further agrees that if Delta fails to cure such breach within the time provided for in this Agreement, then Lessor and/or the lenders will have an additional 30 days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such 30 days, Lessor and/or any lenders has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Agreement will not be terminated while such remedies are being so diligently pursued.

(b) Any party that succeeds to the interest of Delta (a "Successor Landlord") after the cancellation or termination of the Terminal Leases or after the foreclosure or exercise of power sale under a mortgage or deed of trust (or a deed in lieu thereof) shall not be (i) liable for any act or omission of any prior landlord (including Delta), (ii) liable for the return of any security deposit not actually received by the Successor Landlord, (iii) subject to any rent offsets not provided for herein or otherwise agreed to by Delta (or such prior landlord) in writing or defenses that Company might have against any prior landlord (including Delta), (iv) bound by any advance payments made by Company to Delta except for payments for the then current month, (v) bound by any oral modification, amendment, cancellation or termination of this Agreement made without the written consent of Successor Landlord or (vi) bound to perform or pay for any construction for Company's occupancy.

**ARTICLE XX: LEGAL COSTS**

**20.1 Legal Fees.** If either party commences an action against the other party arising out of or in connection with this Agreement or the Premises, then the prevailing party will be entitled to have and recover from the other reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal. If Delta becomes a party to any litigation concerning this Agreement, the Premises, the Delta Facilities or the Airport, by

reason of any act or omission of Company or its authorized representatives, Company will be liable to Delta for reasonable attorney's fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by it in the litigation.

**20.2 Delta Costs.** Further, Company shall reimburse Delta within ten days of receipt of Delta's statement(s) for any attorney's fees or similar expenses as below described incurred by Delta: (a) in respect of any default by Company in the observance and performance of any obligation under this Agreement whether or not Delta commences any action or proceeding against Company; (b) any appearance by Delta (or any officer, partner, employee, agent or representative of Delta) as a witness or otherwise in any action or proceeding whatsoever involving or affecting Delta, Company or this Agreement; (c) any amendment, modification or extension of this Agreement (and any negotiations with respect thereto); (d) any assignment, sublease or leasehold mortgage proposed or granted by Company (whether or not permitted under this Agreement) and all negotiations with respect thereto; (e) any alterations of the Premises by Company or negotiations with respect thereto.

**20.3 Survival.** Company's obligations under this Article survive the expiration of the Term or any other termination of this Agreement. This Article is intended to supplement and not to limit other provisions of this Agreement pertaining to indemnities and attorney's fees.

## **ARTICLE XXI: GENERAL PROVISIONS**

**21.1 Nonwaiver of Rights.** No waiver of breach by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party. No notice shall be required to restore time of the essence. Each right and remedy of Delta or Lessor provided for in this Agreement, now or hereafter existing at law, in equity or by statute or otherwise, shall be cumulative and concurrent, and the exercise or beginning of the exercise of any one or more of such right or remedies shall not preclude the exercise of that right or remedy in the future or the exercise of other right or remedy at any time.

**21.2 Notices.** Notices required by this Agreement shall be given in writing either by personal service on the person authorized to receive notices specified below by reputable overnight delivery company that provides written evidence of delivery or certified mail – return receipt requested. Any such notice that is properly addressed shall be considered given on the date of delivery or refusal to accept delivery. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received.

Notices to Delta shall be addressed as follows:

Concessions Properties Representative  
Corporate Real Estate  
Delta Air Lines, Inc., Dept. 877  
1030 Delta Boulevard  
Atlanta, GA 30354-1989

Notices to Company shall be addressed as follows:

Christopher J. Redd  
OTG Management

Office of Corporate Counsel  
335 West Butler Avenue, Suite 120  
Chalfont, PA 18914

**21.3 Interpretation.** The headings of the several Articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement and will be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. Provisions in this Agreement relating to number of days shall be calendar days. References to statutes, sections ordinances or regulations are to be construed as including all statutory, ordinance or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation. Whenever the singular number is used in this Agreement and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "person" shall include corporation, partnership, firm, limited liability company and association. This Agreement is divided into twenty-two (22) Articles, which may be subdivided into Sections, which may in turn be subdivided into Subsections. A reference in this Agreement to an Article, Section or Subsection shall include all subdivisions thereof.

**21.4 Severability.** In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained will not affect the validity of any other covenant, condition or provision; provided that the invalidity of any such covenant, condition or provision does not materially prejudice either Delta or Company in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

**21.5 Agent for Service of Process.** It is expressly understood and agreed that if at any time Company is not a resident of the State of New York, or is an association or partnership without a member or partner who is a resident of said State, or is a foreign corporation, Company will appoint an agent for service of process in the State of New York. Due to any failure on the part of said agent, or the inability of said agent to perform, or Company's failure to appoint an agent when required, Company does hereby designate the Secretary of State, State of New York, its agent for the purpose of service of process in any court action between it and Delta arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of New York for service upon a nonresident. It is further expressly agreed, covenanted and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Company may be personally served with such process out of this State by the registered mailing of such complaint and process to Company at the address set forth herein. Any such service out of this State shall constitute valid service upon Company as of the date of mailing. It is further expressly agreed that Company is amenable to and hereby agrees to the process so served, submits to the jurisdiction and waives any and all obligations and protest thereto, any laws to the contrary notwithstanding.

**21.6 Waiver of Claims.** Company hereby waives any claim against Delta and its officers, agents or employees and Delta waives any claim against Company for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring

this Agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

21.7 **Exhibits.** All Exhibits listed in the Table of Contents of this Agreement are intended to be and hereby are specifically made a part of this Agreement. A reference herein to an Exhibit includes any sub-parts or multiple pages thereof. It is specifically agreed that Exhibits may be modified and substituted in accordance with the provisions of this Agreement upon written approval of the substitute Exhibit by the parties, without formal amendment hereto.

21.8 **Incorporation of Required Provisions.** The parties incorporate herein by this reference any statutory provision, regulation, ruling, order or other legal requirement that is lawfully required to be contained herein by any governmental body or agency.

21.9 **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturer or any other similar such relationship, between the parties hereto. The parties shall understand and agree that neither the method of computation of Payments, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of Sublessor and Company, with Company being a permitted user of the Premises by Delta.

21.10 **Nonliability of Agents or Employees.** No officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

21.11 **Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Agreement.

21.12 **Right to Amend.** In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Company agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required.

21.13 **Time of Essence.** Time is expressed to be of the essence in this Agreement.

21.14 **Gender.** Words of any gender used in this Agreement shall be construed to include any other gender and words in the singular number shall be construed to include the plural and the plural shall be construed to include the singular, unless the context otherwise requires.

21.15 **Force Majeure.** Except for the Payments required by this Agreement (other than liquidated damages provided for in Article VIII), neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party or persons or entities for whose acts or omissions that party is responsible under this Agreement or applicable law, including, without limitations, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control.

21.16 **Quiet Enjoyment.** Delta covenants and agrees that Company, upon the Company making all Payments hereunder and performing all the terms, covenants, conditions and provisions of this Agreement on its part to be kept, performed or observed, shall and may peacefully and quietly have and enjoy the Premises free of any act or acts of Delta, except as expressly agreed upon in this Agreement. Company expressly acknowledges and agrees that Company's right to quiet possession of the Premises does not preclude Delta's right to make changes and additions to the Delta Facilities, including the Premises, and to do work in the Premises as permitted by this Agreement.

21.17 **Governing Law.**

(a) This Agreement shall be conclusively deemed to be a contract made under, and shall for all purposes be governed by and construed in accordance with the laws of the State of New York.

(b) Each of the parties hereto irrevocably agrees for the benefit of the other party that the courts of the State of New York shall have exclusive jurisdiction to hear and determine any suit, action or proceeding, and to settle any dispute which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

(c) Each of the parties hereto irrevocably waives any objection which it may have now or hereafter to any of the courts mentioned in the immediately preceding Subsection being nominated as forum to hear and determine any suit, action or proceeding, and to settle any dispute which may arise out of or in connection with this Agreement and any claim that any such court is not a convenient or appropriate forum.

21.18 **Certification.**

(a) Company, by execution of this Agreement, certifies that it:

1. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
2. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.
3. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

(b) Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Company who is unable to certify to the above. If Company knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use of the project, the Federal Aviation Administration may direct, through Delta, cancellation of the contract at no cost to the Government.

Further, Company agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts.

(c) This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that Company or any subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through Delta, cancellation of the contract or subcontract for default at no cost to the Government.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Company is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, section 1001.

**21.19 Licenses and Permits.** Company shall obtain and pay for all licenses and permits necessary or required by law for the conduct of said operations.

**21.20 Patents and Trademarks.** Company represents that, to the best of its knowledge after reasonable investigations, it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement. Company agrees to save and hold Delta and Lessor and their officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Company under or in any way connected with this Agreement.

**21.21 Hazardous Material.**

(a) In the case of any hazardous substance spill, leak, discharge or improper storage on the Premises or contamination of the Premises by any person associated with Company, Company agrees to promptly notify Delta of such occurrence and to make or cause to be made any necessary repairs or corrective actions as well as to clean up and remove any leakage, contamination or contaminated ground. In the case of any hazardous substance spill, leak, discharge or contamination by Company or its employees, servants, agents, contractors or subcontractors on the Premises or as may be discharged in, on or under adjacent property which affects other tenants' property, Company agrees to make or cause to be made any necessary corrective actions to clean up and remove any spill, leak, discharge or contamination. If Company fails to repair, clean up, properly dispose of or take any other corrective actions as required herein, Delta may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak or contamination. Any such repair, cleanup or corrective actions taken by Delta shall be at Company's sole cost and expense and Company shall indemnify and pay for and/or reimburse Delta for any and all costs (including an eighteen percent (18%) administrative cost) Delta incurs as a result of any repair, cleanup or corrective action it takes.

(b) Company shall promptly supply Delta with copies of all notices, reports, correspondence and submissions made by Company to any governmental entity regarding any hazardous substance spill, leak, discharge or cleanup including all test results.

(c) This Section and the obligations herein shall survive the expiration or earlier termination of this Agreement.

**21.22 Writing Required.** Neither this Agreement nor any term or provision hereof may be amended, changed, waived, discharged or terminated orally. Any amendment or change can only be done by an instrument, in writing, signed by both parties. Any waiver or discharge (other than a discharge resulting from full performance) can only be done by an instrument, in writing, signed by the party to be bound.

**21.23 No Right of Redemption.** Company waives any right of redemption or reinstatement of Company under any present or future case law or statutory provision in the event Company is dispossessed from the Premises for any reason. This waiver applies to future statutes enacted in addition or in substitution to the statutes specified herein.

**21.24 Accord and Satisfaction.** The payment by Company or the receipt by Delta of a lesser amount than the Payments stipulated in this Agreement may be, at Delta's sole option, deemed to be on account of the earliest due stipulated Payment, or deemed to be on account of Payments owing for the current period only, notwithstanding any instructions by or on behalf of Company to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and Delta may accept such check or payment without prejudice to Delta's right to recover the balance of such Payments or pursue any other remedy available in this Agreement, at law or otherwise. Delta may accept any partial payment from Company without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law.

**21.25 Agreement to be Signed.** The preparation and submission of a draft of this Agreement by either party to the other does not constitute an offer nor will either party be bound to any of the terms of this Agreement or the entirety of this Agreement itself until both parties have fully executed a final document and an original signature document has been received by both parties. Until such time as described in the previous sentence, either party is free to terminate negotiations with no obligation to the other.

**21.26 Consents.** If Delta is required to reasonably grant consent or approval, but does not do so, Company's sole and exclusive remedy is to seek to specific performance and in no event will Delta be liable for monetary damages for any failure to act reasonably.

**21.27 Joint and Several.** If Company consists of more than one person or entity, they are jointly and severally liable under this Agreement.

**21.28 Brokers.** Neither Delta nor Company has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Agreement. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, then the party through whom the broker or finder makes its claim will be responsible for such commission or fee and

shall indemnify, defend, protect and hold harmless the other party from any and all losses, damages, costs and expenses incurred by the indemnified party in defending against the same. The provisions of this Section survive the termination or expiration of this Agreement.

21.29 **Recordation.** Company may not cause this Agreement, nor any short form or memorandum to be recorded.

21.30 **Survival.** All Company obligations (including without limitation liability to (a) indemnify and defend Delta in respect of events occurring during the Term, (b) make Payments to Delta and Lessor in respect of accrued charges (including those which have not yet been billed) and (c) to make repairs (inclusive of those relating to the return of the Premises to Delta)) which are accrued at the expiration or earlier termination of this Agreement survive the expiration or earlier termination of this Agreement, provided however, following return of the Premises to Delta, Delta may perform accrued but undischarged Company obligations and Company shall reimburse Delta for all costs in good faith incurred.

21.31 **Authority.** If Company signs as a corporation, a limited liability company or a partnership, then each of the persons executing this Agreement on behalf of Company does hereby represent and warrant that Company is a duly authorized and existing entity, that Company has and is duly qualified to do business in the state in which the Premises are located, that Company has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Company are authorized to do so. Upon Delta's request, Company shall provide Delta with evidence reasonably satisfactory to Delta confirming the foregoing representations and warranties.

21.32 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. Execution and delivery of any counterpart of this Agreement by facsimile, electronic mail or other form of electronic transmission shall be effective as delivery of an original.

21.33 **Airways Consent.** To the extent required by the Airways Sublease, no Concession Sites shall be located in Common Use Space or in the Baggage Space (as defined in the Airways Sublease) without first obtaining Airways' consent. No Concession Sites shall be located in the Sublessee Exclusive Use Premises (as defined in the Airways Sublease) without first obtaining Airways' consent and amending this Agreement to add such Concession Sites and the location of such Concession Sites as part of the Premises under this Agreement.

21.34 **Replacement of Terminal D Concession Agreement.** As of the Effective Date, this Agreement amends, replaces and supersedes the Terminal D Concession Agreement.

## **ARTICLE XXII: ENTIRE AGREEMENT**

22.1 **Entire Agreement.** Company acknowledges and agrees that, except as expressly provided in this Agreement, neither Delta nor any person on behalf of Delta has made, and Delta hereby disclaims, any representations or warranties, express or implied, regarding the business venture proposed by Company at the Delta Facilities, including any statements relating to the potential success or profitability of such venture. Company represents and warrants that it has made an independent investigation of all aspects of the business venture contemplated by this Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all

prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties in connection with the subject matter hereof except as specifically set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed these presents through their respective officers duly authorized.

**LaGuardia USA, LLC**

By: \_\_\_\_\_  
Christopher J. Redd  
Vice President

**Delta Air Lines, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties in connection with the subject matter hereof except as specifically set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed these presents through their respective officers duly authorized.

**LaGuardia USA, LLC**

By:   
\_\_\_\_\_  
Christopher J. Redd  
Vice President

**Delta Air Lines, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties in connection with the subject matter hereof except as specifically set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed these presents through their respective officers duly authorized.

**LaGuardia USA, LLC**

By: \_\_\_\_\_  
Christopher J. Redd  
Vice President

**Delta Air Lines, Inc.**

By:   
Name: David Hamm  
Title: Managing Director, CRG



EXHIBIT A.1

Delta Facility – Terminal D

EXHIBIT A.2

Delta Facility –Terminal C East End

EXHIBIT A.3

Delta Facility –Terminal C Shuttle

EXHIBIT B.1

Departures Level Premises – Terminal D

EXHIBIT B.2

Arrivals Level Premises – Terminal D

EXHIBIT B.3

Temporary Premises – Terminal D

EXHIBIT B.4

Support Space Premises – Terminal D

TBD

EXHIBIT B.5

Departures Level Premises – Terminal C

EXHIBIT B.6

Arrivals Level Premises – Terminal C

EXHIBIT B.7

Temporary Premises – Terminal C

EXHIBIT B.8

Support Space Premises – Terminal C

TBD

## EXHIBIT C

### Use Clause

The Premises will be used for the sale of goods and services as described in the concept descriptions contained in the following pages. In addition to the foregoing, Company may sell (i) other goods or services as approved by Delta and Lessor from time to time from iPads (or similar next generation devices), but including specifically entertainment and lottery and gaming products authorized by applicable law, and (ii) time and/or space on iPads (or similar next generation devices) to third parties for the purpose of advertising or promoting or selling goods or services, all within guidelines approved by Delta and Lessor. Without the express written consent of Delta, Company shall not use the Premises for any other purposes.

EXHIBIT C  
(continued)

Terminal D Concepts

EXHIBIT C  
(continued)

Terminal C Concepts

## EXHIBIT D

### Tenant Handbook

#### I. General Operating Conditions

##### A. Introduction

Exhibit D the Tenant Handbook (including I. General Operating Conditions, II. General Facility Improvement Conditions, and III. Gate Holdroom Area Maintenance Roles and Responsibilities) and the Concession Agreement comprise the complete Company package and is a legally binding document.

The General Operating Conditions should be read and understood by each Company as the basis for operating within the Delta Air Lines Facilities.

Certain operating conditions may not specifically apply to certain Companies depending upon the nature of their business. Where this is the case, the operating conditions will be specifically tailored to reflect the exact characteristics of each Company.

##### B. Assigned Premises

- **Operating Permits, Licenses, etc.**  
Company shall be responsible for obtaining and absorbing all related costs for any necessary operating permits, licenses, or approvals from any government body to enable the Company's business to be lawfully carried on from the assigned Premises.
- **Utilities**  
The Company shall not interfere with Delta furnished and maintained utilities. Furthermore, Company shall not interfere with any utility installations outside the assigned Premises.
- **Counter Fronts, Display Windows**  
All areas seen by the public are to be kept clean, attractively displayed, well illuminated, and adequately stocked at all times during operating hours.
- **Service Areas and Cash Registers**  
Service areas and cash registers must be suitably positioned for the convenience of the customer, such that any lines that develop do not obstruct merchandise displays or public areas. The service and cash register areas are to be configured to service customers with maximum speed and efficiency.
- **Obstruction**  
Company shall not obstruct in any way, the entryways, corridors, halls, stairways, escalators, elevators, exit doors, or any other common public areas, or use these areas for any other means other than as a means of ingress and egress to the assigned Premises. Storing any items in these areas is a Code violation.

- Noise and Vibration

Company shall not allow any undue noise or vibration to be omitted from the assigned Premises which may adversely affect the structure of the building or may interfere with other occupants of the building.

If Company wishes to use musical instruments, televisions, radios, record or tapes, loud speaker apparatus or other equipment to produce or emit musical, speech or noise within the assigned Premises, Company shall first obtain the written approval of Delta.

- Garbage and Trash Removal

The Company shall be responsible for maintaining the assigned Premises in a clean, orderly and safe condition at all times. All refuse, garbage, trash and debris must be cleanly, neatly, and adequately contained within the assigned Premises out of view of public areas and all refuse, garbage, trash, and debris is to be transferred from the assigned Premises to a designated Delta dumpster site in sealed containers. The Company is responsible for keeping the non-public areas used for refuse transit clean at all times.

All flammable trash, waste or garbage and debris which might emit an offensive odor must be adequately contained in an approved covered container until disposed of at the designated dumpster site. Containers must be picked up by the carting company on the day the dumpster is put out for pickup.

All cooking oils, fats, etc. must be carefully conveyed to Delta's collection location. At the collection location, the fats/oils are to be transferred to the storage container neatly and without spills. Spill clean-up costs will be back-charged to the Company.

- Cleaning and Maintenance

All glass windows, doors and walls, floors and other surfaces within the assigned Premises will be kept clean and free of dirt, dust, smudges, and smears at all times by the Company.

Any surfaces, equipment or fixtures within the assigned Premises which are broken or show signs of wear and tear are to be repaired or replaced immediately by the Company.

All light bulbs, fluorescent tubes, spot lights, flood lights, etc. within the assigned Premises are to be replaced as and when necessary at the Company's own cost.

Any persons or firms employed or engaged by the Company to do improvement/repair work within the assigned Premises must be approved by Delta. Such persons or firms shall check in with Delta, and while

performing work within the building, comply with all rules, regulations and procedures issued by Delta and the Lessor.

- Office Space

A limited amount of unfinished office space may be available within the Delta Facilities. Any office space which becomes available shall be allocated to those Companies which demonstrate the greatest need for office space. Any Company which requests and is allocated office space will be required to finish said space at their sole cost and expense. Furthermore, Company agrees to pay to Delta the then current rental charge for said space.

- Signage

No sign, banner, notice or other lettering shall be exhibited, inscribed, painted or affixed by Company on any part of the exterior or interior of the assigned Premises without the prior written consent of Delta.

Company agrees to maintain its approved signage in a good state of repair at all times. Upon vacating the assigned Premises at termination or otherwise, Company agrees, at its sole cost and expense, to remove all signs and to repair any and all damage caused by such removal in a timely fashion.

- Telephone/Computer Lines and Security Alarms

The Company shall be responsible for the installation and maintenance of any telephone and/or computer lines and security alarms. With regard to security alarms, Delta shall be notified of such installation for approval. Delta is also to be notified in writing of all procedures to be used in the event of alarm initiation. Company shall provide Delta with a list of after-hours contact names and telephone numbers.

- Space Use Restrictions

No space within the assigned Premises or the Delta Facilities shall be used by the Company for the manufacture of merchandise or for the storage or breakdown of merchandise except as expressly approved in writing by Delta.

- Existing Escalators & Elevators

The Company is prohibited from using Delta's passenger elevators and escalators for the transport of deliveries, merchandise, or food substances. If available, Delta will designate the use of a freight elevator. Use of this freight elevator is not guaranteed; its use is conditional upon the observance of Delta's rules regarding the safe and suitable operation of said freight elevator.

C. Fire Equipment and Prevention

- Equipment

Adequate fire fighting equipment required by the Company for its operation from the assigned Premises should be obtained and maintained at the Company's own cost during the continuance of the Concession Agreement.

- Prevention

The Company shall take all practical steps against fire and fire risks and in particular shall not obstruct or block any fire exit or access to fire fighting equipment.

Any storage areas are to be kept neat and clean with any inflammable rubbish kept to a minimum to avoid a fire hazard and a violation of any federal, state and municipal fire codes or ordinances.

The Company shall ensure that its staff members are trained in fire and evacuation procedures for the assigned Premises and the Delta Facilities. Records of staff training shall be kept and supplied to Delta upon request.

D. Staff

- Employment

The Company should take all reasonable steps to ensure that staff employees are persons of good character and integrity who have the requisite skills and experience for the efficient and safe performance of their duties.

- Uniforms

The Company shall, at its expense, provide each member of the sales staff with a uniform of a design to be approved by Delta which shall be worn whenever the said staff are on duty and which shall bear the name of the Company, personal identification and their position.

All Company staff are to be of neat and tidy appearance at all times while on duty.

- Training

The Company shall provide adequate staff training which shall include, but not be limited to, the provision of sales and product knowledge and customer service procedures. Records of staff training shall be kept and supplied to Delta upon request. Furthermore, Company and its employees shall participate in all appropriate Lessor-sponsored airport training programs.

- Security

All the Company's staff and contractors will be required to conform with current airport security plans and procedures in force at the time of access including applications for identification passes for staff and vehicles. The Company shall ensure that necessary staff and contractors are in possession of the appropriate security passes issued by Delta and Lessor.

- **Parking**  
All employees of the Company will be required to park at the designated Lessor employee parking lot. There is a fee for employee parking and this fee is to be confirmed and paid by the Company through the Lessor's designated office.

E. **Service Standards**

- **Quality Assurance Monitoring**  
Company agrees to cooperate with Delta and Lessor in conducting periodic surveys of Company's customers to quantify the levels of customer satisfaction to identify areas of service and quality standards which need to be improved.
- **Pricing Policy**  
Prices for all items approved to be sold by Company will be clearly marked on the product, by way of point of sale materials in close proximity, or on clearly positioned price boards.
- **Prices**  
Company may not charge prices for any products or services that exceed street prices as defined in this Agreement.
- **Availability of Items**  
The Company will at all times maintain a supply of goods so as to ensure a satisfactory range and level of service to the public and maximization of gross sales.
- **Display of Goods**  
The Company shall, at its own expense, maintain the highest standard of display of the approved goods in the areas provided for this purpose.
- **Operating Hours**  
The Company shall ensure that the assigned Premises are open and remain open at such times as will be specified by Delta. Company shall post operating hours in the window using signage specifications approved by Delta.  
  
In addition, the Company shall ensure, at times of inclement weather or other operational difficulties which may lead to aircraft arrivals and departures being delayed beyond the normal opening hours of the assigned Premises, that the stores are open and staffed during such emergency periods.  
  
The Company will also provide to Delta a schedule of daily operating hours and a listing of after hour contact telephone numbers of key management and supervisory personnel.
- **Staffing Levels**

The Company shall adequately staff its store with qualified employees to match the passenger levels to enable customers to be served promptly, courteously and efficiently within the facility and that undue queuing at the counters/cash registers does not occur. All available counters/cash registers should be set up to be manned at short notice should business levels suddenly increase.

Delta reserves the right to review Company staff levels where these are not considered acceptable.

- **Credit Cards**  
The following credit cards are to be accepted for all transactions in the assigned Premises unless previously waived by Delta. Discover/Novus cards may be accepted at Lessee's discretion.
  - American Express
  - Diners Club
  - Mastercard
  - Visa
- **Complaints**  
Any complaints made by members of the public to the Company should be dealt with speedily and courteously and in any event within twenty-four hours of receipt and the Company shall further supply Delta with a copy of any such complaint and the reply thereto.
- **Miscellaneous**  
Company shall make change for persons who request same.

#### F. Delivery and Distribution

The Company shall be solely responsible for checking, inspecting, safeguarding and paying for deliveries of such merchandise, supplies, goods, materials, equipment and products addressed to that Company.

Delta reserves the right to designate the routing, timing and method whereby freight, furniture, merchandise, or bulky materials of any kind are brought into, moved or removed from the assigned Premises. Delta further reserves the right to inspect all freight being brought into the terminal buildings and to refuse delivery of any freight which violates any of the terms or conditions of this Agreement.

The Company, its vendors, contractors, etc., are not permitted to use hand trucks, or platform dollies in the public corridors, hallways and elevators for the delivery or receipt of equipment, merchandise and/or refuse except those equipped with rubber tires and side guards.

#### G. General Items

- The Company shall provide a management representative(s) at Delta sponsored meetings, when requested. These meetings may include, but are not limited to, customer service, operations and emergency planning sessions.
- Canvassing, soliciting and/or peddling in the building or common areas of the Airport is prohibited, and each Company shall cooperate with Delta to prevent such unauthorized actions.
- Delta shall be notified in writing within three (3) days of any accident involving the Company staff, contractors, other airport staff or members of the public, which have occurred at the assigned Premises, and the Company agrees to cooperate with any investigation thereof.

#### H. Miscellaneous

- The Company is responsible for providing Delta with numerous documents at various times during the Term of the Agreement

While a checklist outlining some of the bonds, certificates and data required has been provided for easy reference, Company should refer to the Agreement for a complete accounting of all obligations.

## **II. General Facility Improvement Conditions**

### **A. Introduction**

The Tenant Construction Procedures, have been written to enable and assist the Company, Company's architect and Company's contractor to construct the Company's assigned Premises. The design and construction obligations of the Company under this Agreement are listed herein. The Company shall follow and conform to all rules, regulations and requirements which Delta or Lessor may promulgate relative to the design and construction of the Company's assigned Premises. Any deviations from these guidelines must be submitted in writing and must be approved in writing by Delta or their Representative.

Each Company shall bear responsibility for compliance with all National, State and Local laws, statutes, ordinances and codes and any and all construction procedures applicable to the design and construction of the assigned Premises including Lessor's "Tenant Construction Review Manual" (latest edition), as it now exists and hereinafter may be amended.

### **B. Permits and Applicable Codes**

All Company plans, specifications and construction shall meet the requirements of, and in all other ways conform to, the Agreement, all Agreement Exhibits, statutes, laws, ordinances, codes and permit requirements applicable at any time during the course of design and construction of the assigned Premises including but not limited to the following:

- A. All correspondence relating to the assigned Premises, between the Port Authority and either the Company, the Company's architect/engineer, or the Company's contractor, regarding the design and construction of the assigned Premises, shall be copied and delivered to Delta or Delta's Representative within 48 hours from the date on the correspondence.
- B. Only Delta or Delta's Representative has the authority to schedule Port Authority pre-construction meetings on behalf or for the assigned Premises.
- C. All communication on technical issues relating to the design and construction of the assigned Premises, between Delta or Delta's Representative, with the Company's architect/engineer and contractor shall be free, open and unrestricted, so long as the Company is copied and or otherwise made completely aware of all communications.
- D. All Port Authority Tenant Alteration Applications (TAA's) must be signed by Delta. The Company's architect should submit originals to Delta's Representative for execution. All of Delta's design comments must have been incorporated or resolved in writing and accepted by Delta or Delta's Representative prior to submittal of any TAA.
- E. The Company shall be solely responsible for obtaining and providing Delta with copies of all necessary permits for the assigned Premises, including Certificate of Occupancy. The Company shall also be responsible for payment of all fees, including those required for connection of all utilities.

### **C. Utilities**

Delta shall designate utility connection points for each concession location. The Company shall be responsible for the connection of utilities and the continuation of utility lines to any and all required utility connection points. If any Company shall require more capacity than is provided herein, Company shall be responsible for the cost of any additional capacity and shall coordinate all such work with Delta.

### **Heating, Ventilating and Air Conditioning (HVAC)**

In some Company spaces, the ducts serving those spaces may be intended to serve more than one Company space. Companies should be aware of the fact that future adjacent Company(s) may need to gain access to a finished assigned Premises, which may possibly disrupt the Company's operations. The Company may opt, therefore, to modify the existing duct stubbed into or near the assigned Premises so that future Company(s) can gain access to such duct outside of the assigned Premises. In the event that such modifications are completed by the Company, such work will be deemed to be for the Company's convenience and the cost of such work will be borne by the Company. Any Company installed air conditioning equipment or controls must be compatible with Base Building Systems. Ducts stubbed into or near Company assigned Premises which serve more than one Company space are shown on the Base Building Construction Drawings; copies of which may be obtained from Delta at the Company's written request.

It is Delta's intent to provide exhaust fans and make-up air from the central building systems. It shall be the responsibility of the Company(s) to extend the ductwork for distribution of the exhaust and make-up air to each of the assigned Premises. It is also

the responsibility of each Company to provide cooking exhaust systems and exhaust hoods with proper fire suppression systems at each cooking area, or as required by applicable building laws, codes, and regulations. The Company can use the existing building cooking exhaust system, if one exists; but it will be the responsibility of the Company to ascertain and demonstrate that the existing building system has the required exhaust rates and capacities for the Company's intended use, considering and accounting for the shared and combined use of the existing building system.

It is intended that any Company installed HVAC equipment (if permitted by Delta) be tied into the Building Management System (BMS). Delta shall provide, at Company's expense, an empty conduit with drag line from the nearest BMS control location to the Company assigned Premises; for use by Company in tying the Company installed HVAC equipment into the BMS. It is not intended that any Company installed lighting be tied into the BMS.

#### **Water Service**

Cold water piping from the central building system is available in the Delta Facilities. The approximate location of such service shall be indicated on the Base Building Construction Documents; copies of which may be obtained from Delta at the Company's written request. Each Company is, however, responsible for verifying the exact location of the water service in the field.

#### **Sanitary Sewer Service**

Sanitary waste piping is available from the central building system. The Company is responsible for any waste piping and associated venting within the assigned Premises and for connecting to the building systems, where and whatever that distance may be. The Company may refer to the Building Construction Documents for the nearest locations.

#### **Natural Gas Service**

Natural gas service may be available at the Delta Facilities. The Company is responsible for the gas piping distribution within the assigned Premises and the extension of the gas service to the closest point of use and tie-in to the building natural gas system, including all valves, regulators & controls.

#### **Electrical Service**

Electrical power is available to each Company assigned Premises. Generally, voltages are available at 120/208 and 277/480 at an electrical closet in or near the assigned Premises. The Company is responsible for ascertaining the exact location. However, if ample voltages or amperages are not available nearby, the Company may need to extend conduit(s) to the nearest main distribution panel within the Delta Facilities electrical room, at the Company's sole cost. All circuit breakers, switches and fuses required at the main distribution panels shall be provided by the Company. The Company is responsible for the installation of an electrical panel and all electrical conduit and wiring within the Company assigned Premises.

Electrical power to Company is available at either 208V-3P or 480V3P; based on available power within the Delta Facilities. Those Companies that are allocated 480V - 3P power are responsible for providing their own step-down transformers, within their own assigned Premises and at their own cost.

Wherever emergency lighting circuits do not exist, emergency lighting and exit signs installed by the Company must be of the battery-powered type in accordance with established building standards per NYC. Building Code. Extended emergency lighting circuits are indicated on the Base Building Construction-Documents; copies of which are available from Delta at the Company's written request.

#### **Fire Alarm and Detection System**

The Base Building is maintained by Delta's maintenance company, (currently Mainco). Delta's maintenance company retains, on an as needed basis, a fire alarm vendor/contractor. This fire alarm vendor/contractor is responsible for the satisfactory operation & maintenance of the existing fire alarm system.

A conduit will be run by Company to the nearest fire alarm and detection system control panel, for connection of all Company installed fire alarm initiating devices, fire alarm related control functions, and combination, strobe lights and gongs etc. All such new fire devices required for the legal operation of the assigned Premises shall be ordered by the Company from the fire alarm vendor/contractor. The purchase cost of these devices will be at the Company expense. The actual installation & wiring of these devices will be by the Company's licensed electrician, in consultation & coordination with the fire alarm vendor/contractor, at the expense of the Company, including the cost of the fire alarm vendor/contractor time.

Any Company local fire alarm sub-systems, such as kitchen fire suppression systems, shall be provided by the Company at his own expense. Any costs associated with the interconnection of the sub-system, engineering and software changes to the Base Building fire alarm system, shall be borne by the Company. Final connections in the Base Building fire alarm panel shall be made by the fire alarm vendor/contractor, at Company's expense.

The fire alarm vendor/contractor must be present for all inspections, tests, service, and tie-ins into any existing work or panels. The Base Building fire alarm and detection system which will tie into the Company premises is tied to the existing fire alarm system and to the Port Authority's proprietary system. Information regarding the system is available from Delta at the Company's written request.

#### **Fire Protection System**

If the Delta Facilities are equipped with a fire sprinkler system, the Company shall make connections to the building system at the nearest, closest location.

Company responsibilities relative to smoke control are as required by the NYC Building Code and the Lessor's requirements, whichever is more stringent.

#### **Telephone Service**

The Company is responsible for arranging all telephone services, at its expense. Existing telephone conduit homeruns, where feasible, will be retained by Delta for installation of new telephone cables by the Company. Where required, new empty conduits of suitable size will be stubbed into the assigned Premises, either from below the floor slab or above the suspended ceiling, by the Company. Conduits will be terminated with bushings at the ceiling areas within the demising walls of the Company Premises. All empty conduits will contain a drag wire. The Company is responsible for coordinating all telephone service requirements with Delta.

#### D. Insurance Requirements

The Company's contractor, prior to the start of any construction, shall submit certificates evidencing the following insurance coverages and minimum limits of liability to Delta:

- A. Any tenant alteration or renovation (TAA) with a cost of \$1,000,000 (one million dollars) or more must be submitted to Treasury Risk Management through the REO for written approval of the certificates of insurance prior to the commencement of *any* construction work.
- B. Any Minor Work (Maintenance) request or TAA with a cost of less than one million dollars will be reviewed by the REO using the following guidelines:
  - a) Workers' Compensation is required for all tenant alterations.
  - b) Commercial General Liability Insurance on an occurrence basis with limits as follows:
    - (1) Ramp-side (Aeronautical) \$3,000,000 (General Aggregate, Products - Completed Operations Aggregate, Each Occurrence),
    - (2) Roadside (non-aeronautical) \$2,000,000 (General Aggregate, Products - Completed Operations Aggregate, Each Occurrence).
  - c) Automobile Liability (if Autos are used) for (*Any*) or (owned, Hired, Non-Owned) autos with limits as follows:
    - (1) Ramp-side (Aeronautical) \$5,000,000 Combined Single Limit,
    - (2) Roadside (non-aeronautical) \$2,000,000 Combined Single Limit.
  - d) For Commercial General Liability and Automobile Liability, the PA of NY & NJ and Delta must be included as an additional insured. Certificate holder IS not the additional insured unless it says so.
  - e) If the cost of the TAA (or construction alteration) is less than one million dollars and the work to be done will be near aircraft (such as runways, taxiways, ~amps and apron areas, or where the contractor would be in the same location as aircraft), then the alteration must be submitted to Treasury Risk Management in the same manner as stated in b) (1) above.
  - f) The Certificate of Insurance must include the TAA number and will be retained in the TAA or Minor Work (Maintenance) Request file by the REO.
  - g) The certificate of insurance and liability policy(ies) **MUST** contain the following endorsement for the above liability coverages:

*"The Insurer(s) shall not, without obtaining the express advance written permission from The General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of The Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the*

*governmental nature of the Port Authority, or the provisions of any statues respecting suits against the Port Authority. "*

In addition, the Lessor and Delta shall be named on the Certificate(s) as additional insureds and be provided with a thirty (30) day written notification in the event of cancellation, renewal or a material policy change. Each certificate must include the name of the Company, the Company's contractor and indicate the Delta Flight Center, Building Numbers 53 and 54 at JFK or Terminals C & D at LaGuardia as the location to be insured.

#### **E. Safety Program**

The Company's contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Special care must be taken to protect the public from all work. The contractor shall provide adequate fire protection within the assigned Premises while under construction. Delta or Delta's Representative or the Lessor or its representatives may stop any work at any time immediately and the contractor will correct any item which is in violation of any laws, statutes, ordinances, codes or local procedures or which may, in Delta's sole opinion and discretion, cause injury or harm to the public or the property.

#### **F. Submittal of Construction Documents**

The following section defines the responsibilities of the Company, Delta and the Lessor. An understanding of these responsibilities by the Company and its' architect is essential before any attempt is made at starting design or planning construction.

It should be understood and acknowledged by the Company that, unless otherwise agreed to by Delta, any existing space to be renovated and used by the Company (the assigned Premises) is accepted "**as is**". It is the Company's responsibility, and at the Company's sole cost, to upgrade the assigned Premises to meet Code requirements for the intended occupancy & use of the space. This includes, but shall not be limited to: floor, wall and ceiling fire assemblies & ratings; structure(s); fire proofing; fire dampers; smoke dampers; combination type smoke & fire dampers; exhaust systems within the space; supply air systems within the space; sprinklers; fire alarm devices; egress paths; fire stopping & sealing all existing and new penetrations to maintain fire assembly rating; waterproofing of floor in wet areas; in general, any items requiring upgrade to meet current building Codes.

##### **Conceptual Design Drawings (generally a 30% submittal)**

Company shall submit to Delta for review and approval five (5) 11 x 17 sets of prints and one (1) CD of assigned Premises' conceptual design drawings in PDF format prepared by Company's licensed architect (specifications shall be incorporated within the drawings). As a minimum for a conceptual submittal the drawings shall include, but not be limited to:

- A. Architectural design of the space including the storefront, floor plans, reflected ceiling plans, lighting layout and elevations (interior and storefront). A Code and egress analysis must be included in the submission. Delineation of the temporary construction barriers must also be indicated, dimensionally referenced from the Lease Limit Line.

by Delta until conceptual review is completed and approved. In any event, Delta requires written responses to any comments made within ten (10) business days.

If assigned Premises' conceptual design drawings are returned to the Company without Delta's approval, said assigned Premises' conceptual design drawings shall be immediately revised by the Company and resubmitted to Delta for approval within ten (10) business days of their receipt by the Company of Delta's conceptual comments.

**Any revisions** of the approved conceptual design drawings must be approved in writing by Delta. Failure to follow this provision will be at the Company's sole risk.

### **100% Construction Documents and Specifications**

Company's construction documents shall be prepared by a New York registered Architect and shall bear his/her seal and registration number. The cover sheet shall show the assigned Premises' name and space number in bold letters along with a Tenant Location/Key Plan. All drawings must also have a space for Lessor and Delta's approval. Construction documents shall be prepared in strict compliance with the approved conceptual design drawings.

Company shall submit to Delta five (5) complete 11 x 17 sets of prints and one (1) complete PDF set of construction drawings (specifications shall be on the drawings), prepared and stamped by an architect licensed by the State of New York, for Delta's approval. Once all Delta comments are resolved and incorporated in the drawings and the submittal is approved by Delta in writing, the Company's Architect of Record (AOR) shall then prepare a Lessor Tenant Alteration Application (TAA) for Delta's signature. The TAA must explain the full scope of work to be performed along with a stated estimated construction cost, Contractors contact information, and WBE/MBE information filled out in Part 2. Delta will sign the TAA and will return TAA to Company's architect, along with a signed Delta letter addressed to the Port requesting the Port's review of the submittal. The Company's architect will submit a Signed and Sealed letter to the Port, identifying itself as the Architect of Record; along with the signed and sealed TAA and accompanying Delta letter. The required number & size of drawings to be submitted to the Port for review & approval is spelled out in the Port's Tenant Construction Review Manual. No construction work is to proceed until Delta's or Delta's Representatives' written authorization, which will be based on the Lessor's approval to schedule a pre-construction meeting, which can only be arranged by Delta. After or before the Lessor's pre-construction meeting, Delta or Delta's Representative will separately arrange a pre-construction meeting at the site, with participation of the local station representatives. Any waivers of these meetings will be at Delta's sole discretion. Forty eight (48) hours prior to the time of the local site pre-construction meeting, a completely detailed CPM schedule (developed by and shown on the Company's general contractor's letterhead) is to be delivered to Delta or Delta's Representative for review. Construction will not be permitted to begin, until the detailed CPM schedule is approved by Delta.

Construction Documents and Specifications, drawn to the minimum scale as called for below unless dictated otherwise by the Lessor's Tenant Construction Review Manual, shall include but not be limited to:

- A. Cover sheet with airport location plan and key plan inside terminal,
- B. Floor Plan (1/4" scale minimum), indicating:
  - 1) Location of all walls, partitions and doors
  - 2) Lease line relationship to adjacent Premises

- B. Material selections and finishes including specifications, color and two mounted material sample boards, with evidence attached for reference that materials/finishes conform to the fire resistance rating required by code. The material boards must be keyed to a floor plan, for Delta's understanding & review. Submittals without a material board and key plan will be cause for rejection of the entire submittal.
- C. Merchandising layout of the space including merchandising allocations, fixture locations (both permanent and movable) and catalog cuts of fixtures.
- D. Structural design if required, including floor plans and calculations shall be developed and submitted. Static, dynamic and seismic design conditions must be accommodated. All potential modifications to the existing structure/building must be clearly shown and eventually detailed.
- E. Mechanical HVAC System including basic equipment to be used and its proposed location, duct distribution system (double line) and diffuser locations. All equipment specifications and catalog cuts are also required.
- F. Mechanical Plumbing System including basic equipment to be used and proposed locations to be shown, including tie-ins to: potable water, waste, and vent. Any proposed hot water heaters shall be shown in plan and included on a preliminary riser diagram.
- G. Mechanical Fire Protection System including basic Code compliant system shall be shown, including sprinkler mains, risers and fire alarm devices. Questions about how to and where to tie-in to Delta's primary fire protection system shall be directed in writing to Delta's Representative. A fire alarm riser diagram shall be included. During construction, the Company's contractor shall engage and compensate the fire alarm vendor/contractor to coordinate the installation and order any fire alarm devices, and the fire alarm vendor/contractor shall participate in the testing, inspection and approval of the fire alarm system tie-ins to the Base Building fire alarm system.
- H. Electrical System including floor plan and reflected ceiling plans showing outlets, type of lighting fixtures, specifications and catalog cuts of all electrical equipment along with the proposed location, of panel board(s), switchboards(s), and a schedule of the projected electrical loads. A single line diagram must be included.
- I. Storefront signage & blade signs must be included on storefront design submittal.

The Company shall also submit with this conceptual submittal a complete but simplified CPM bar chart schedule for the entire design and construction periods, making assumptions and allowances for Delta's review period (5 business days), the Port's review period (8 weeks) and the actual start and duration of construction including AE inspections, the controlled testing & inspections, Port partial final inspections along the way, and final Port inspections and testing. Conceptual submittals made without a complete schedule will be deemed incomplete and approvals withheld, until such time as a schedule is submitted for Delta's review & ultimate approval.

After review of assigned Premises' conceptual design drawings, Delta shall return to the Company one (1) set of prints of assigned Premises' conceptual design drawings, with either approval to proceed, with incorporation of comments noted, or disapproval with comments to resubmit for further review. Construction documents will not be reviewed

- 3) Delta and Company Construction responsibilities
  - 4) Overall dimensions of space and column locations
  - 5) Ceiling height for each space or room
  - 6) Location/ Site plan (not to scale)
  - 7) Detailed sections as required to clearly explain all construction and materials employed
  - 8) Room finish schedule with carpet fire rating
  - 9) Door and hardware schedule
  - 10) Furniture and fixture layout plan,
- C. Reflected Ceiling Plan, indicating:
- 1) Ceiling grids, soffits, changes in ceiling heights, etc.
  - 2) All light fixtures
  - 3) HVAC supply, return grilles and access panels
  - 4) Other items attached to or coming through the ceiling
  - 5) Type of ceiling system with fire rating,
- D. Egress Plan & Code Analysis,
- E. Plumbing Plan, indicating:
- 1) Location and size of water and supply lines
  - 2) Location and size of drains, vents and grease traps
  - 3) Water and sanitary riser diagrams (size all pipe)
  - 4) Valves, tees, cleanouts, floor drains, tanks, pits, etc.,
- F. Mechanical Plan, indicating:
- 1) Location and size of grilles, registers, dampers and access panels
  - 2) Location of all HVAC equipment
  - 3) Load calculations (mechanical load data tabulation sheets must be filled out *completely*, certified and submitted with the Construction Documents - mechanical drawings will not be reviewed without completed mechanical tabulation forms)
- G. Electrical Plan, indicating:
- 1) Power and lighting layout, with circuits and home runs
  - 2) Electrical load requirements in watts shown on panel schedules
  - 3) Emergency Exit Lighting
  - 4) Voltage Distribution equipment
  - 5) Strobe Lights
  - 6) Service riser diagram, giving major service in size of full load amps, main switch size, numbers and size of conduit, conductors, disconnect switches, transformers, etc.
  - 7) Telephone conduits
  - 8) Buzzers, bells and enunciators
  - 9) Load calculations (electrical load data tabulation sheets must be filled out *completely*, certified and submitted with the Construction Documents - electrical drawings will not be reviewed without completed electrical tabulation forms)
- H. Fire Protection Plan, indicating:
- 1) Location of all fire extinguishers
  - 2) Provision of "No Smoking" signs in sales area
  - 3) Smoke alarm system, FA system, sprinkler system,
- I. Signage Plan, including:
- 1) complete details, elevations, sections, mounting details, including all electrical requirements
  - 2) Storefront signs & blade signs must be in conformance with all local

codes.

### **Delta's Review**

After review of the Company's Construction Documents and Specifications, Delta shall return to the Company one (1) set of prints of the Construction Documents and Specifications with modifications; approval or disapproval indicated.

If Construction Documents and Specifications are returned to the Company not bearing approval, said documents shall be immediately revised by the Company and resubmitted to Delta for approval within ten (10) calendar days of their receipt by the Company.

After the Construction Documents and Specifications have been approved by Delta, the Company's architect of record shall then prepare a Tenant Alteration Application (Form PA531) for submittal of the Construction Documents and Specifications to the Lessor for review. The procedures for preparation and submittal of the Tenant Alteration Application and attachments are as follows, unless otherwise revised in the Lessor's Tenant Construction Review Manual (latest edition).

### **Tenant Alteration Application (TAA) Submittal**

Three (3) original signed & sealed TAA forms (Form PA531) shall be prepared by the Company's architect of record, including information relating to the project location, description, estimated value, construction start & duration, contractor, drawing titles, etc. The Company's architect shall also submit an accompanying signed & seal certification identifying itself as the Architect of Record, which has prepared the attached documents and which will inspect & certify the completed construction project at the conclusion of construction. Part 2 of the application must also be completed. A separately attached list of the construction drawings (title, drawing number, date & revision number) shall be made part of the TAA.

The three (3) TAA forms, along with twelve (12) sets of signed and sealed Construction Documents and Specifications, three (3) sets of signed and sealed Structural Calculations (if applicable), and three (3) sets of material finish Certifications of Acceptability, shall then be delivered by the Company to the Lessor for review. Three complete bound sets of the above documentation shall also be delivered to Delta, in 11 x 17 format, including all signed & sealed forms & letters.

After review of the submitted TAA and attachments, the Lessor shall notify the Applicant (Delta) and the AOR, if the application has been approved for construction with no further comments, approved subject to Rider comments or not approved subject to Rider comments. Depending on the size and complexity of the Company project, the Lessor review period should be expected to take between four (4) and eight (8) weeks.

If approval of the TAA is withheld by the Lessor, the Company shall immediately prepare a written response to all Rider comments and shall revise the Construction Documents and Specifications for resubmittal to Delta within ten (10) working days of receipt of Rider comments by the Company. Delta, as Applicant, shall submit the Rider response and revised Construction Documents and Specifications to the Lessor. Depending on the size and complexity of the Company project, the Lessor review period for the Rider resubmission should be expected to take between three (3) and six (6) weeks.

If the TAA is approved subject to Rider comments, the Company may then coordinate the start of construction with Delta and the Lessor, but shall prepare a written response to all Rider comments and shall revise the Construction Documents and Specifications for resubmitted to Delta within ten (10) working days of receipt of Rider comments by the Company. Delta, as Applicant, shall submit the Rider response and revised Construction Documents and Specifications to the Lessor. Contractor to submit their Certificate of Insurance and scope of work questionnaire to the Resident Engineer's (RE) office prior to start of construction. Should any further Rider comments be issued by the Lessor in conjunction with the Company's Rider response(s), the Company shall prepare a response as indicated above, and in the time frame indicated above, for each and every Rider until such time that the Lessor issues a letter of "no further comments". It should be noted that the Lessor review period for each Rider resubmission should be expected to take between three (3) and six (6) weeks. Approval by Delta or Lessor of the plans, or anything contained therein, shall not act to shift responsibility of the cost of any improvements from the Company to Delta or Lessor unless specifically agreed to in writing by Delta or Lessor.

On each occasion that the Company shall fail to submit or resubmit drawings, specifications or any information thereto within the time periods provided for in this Section, and such failure continues for five (5) days following notice from Delta that such drawings, specifications or information thereto are overdue, the Company shall pay to Delta a daily fee of \$1,000 for additional coordination and other services, for each and every day beyond the time periods provided herein. The payment of this fee shall not excuse the Company from default for failure to submit or resubmit drawings or specifications and shall not preclude the exercise of default or other remedies by Delta. Failure to submit any items required hereunder within the time frames established by Delta or to cooperate with any reasonable requests by Delta or Lessor in conjunction with document review shall be deemed a default under the Lease Agreement which shall entitle Delta to any remedy under the Lease Agreement

The Company shall furnish to Delta in writing, the names of its general contractor and all subcontractors. Delta will advise the Company as to whether or not Delta has reasonable objection to any proposed contractor and/or subcontractors.

#### **Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Participation Plan**

As part of the Tenant Alteration Application process, the Company must complete a Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Participation Plan. Although not required at the time of initial submission of the TAA forms, the completed plan should be submitted as soon as practical to the Lessor for review. The Company should be aware that the Lessor will not approve the Tenant Alteration Application for **construction** until the Lessor has reviewed and accepted the proposed MBE/WBE Participation Plan.

As a matter of policy, the Lessor requires Delta and Delta requires Company and Company shall itself require the general contractor or other construction supervisor and each of the Company's contractors to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in all construction work. For purposes hereof, Minority Business Enterprise (MBE) shall mean any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent

of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, Women-owned Business Enterprise (WBE) shall mean any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by women and such ownership is real, substantial and continuing: A minority shall be defined as African American, Asian and Pacific Islander, American Indian or Alaskan Native. "Meaningful participation" shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontractors) covering the construction work are for the participation of Minority Business Enterprises and Women-Owned Business Enterprises. At least twelve percent (12%) of the total dollar value of the construction contracts (including subcontractors) covering the construction work are for the participation of Minority Business Enterprises. Good faith efforts to include meaningful participation by MBE's and WBE's shall include at least the following:

- A. Dividing the work to be subcontracted into smaller portions where feasible,
- B. Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations (The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reason for such decision.),
- C. Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review,
- D. Utilizing the list of eligible MBEs and WBEs maintained by the Lessor or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors,
- E. Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to ensure that the Company and Contractor will meet their obligations hereunder,
- F. Ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis,
- G. Not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs, where appropriate.

MBE/WBE vendor purchases are also encouraged. The Company contractors will receive 100% credit towards fulfilling the MBE/WBE participation goals for the project for the value of purchases made through a Lessor certified MBE/WBE vendor. Furthermore, the Company contractor will receive 60% credit towards fulfilling the MBE/WBE participation goals for the project for the value of purchases made by their subcontractors through a Lessor certified MBE/WBE vendor.

The Company's contractor and subcontractors shall make a good faith effort to comply with the Lessor's Minority/Female Work Force Labor Participation Program. The goals for this program in the labor work force are as follows:

Minority	40%
Minority Skilled Trades	30%
Female Laborers	6.9%
Female Skilled Trades	6.9%

A copy of the Lessor's Monthly Employment Utilization Report must be submitted by the Company's contractor each month.

Company shall maintain and shall require its prime contractor to maintain complete current information on trade union jurisdictional matters, regulations, actions and pending actions, as applicable to the construction obligations required herein. Company shall assign and subcontract these obligations, and employ tradesman and laborers, in a manner which will not unduly risk jurisdictional disputes of a kind which could result in conflicts, delays, claims and losses in the performance of the work.

### **G. Pre-Construction Requirements**

Unless otherwise agreed to in writing by Delta, the Company shall be required to commence construction not later than fourteen (14) days after receipt by the Company of notification of approved Construction Documents by Delta and the Lessor or from date of written notice by Delta that the Company's assigned Premises are ready for construction. The following must be accomplished prior to commencing construction:

- A. Pre-Construction Meeting
  - 1) Delta's Representative will arrange and advise when and where the Port pre-construction meeting will be held
  - 2) Delta's representative will arrange and advise when and where the local Delta Station pre-construction meeting will be held
- B. The Company's contractor will receive specific instructions from Delta's Representative including but not limited to the following issues:
  - 3) Airport by-laws and regulations
  - 4) Safety
  - 5) Security Access to the site
  - 6) Deliveries to the Terminals
  - 7) Security Escort procedures
  - 8) Hours of operation for construction, demolition, and construction debris removal.
- C. The Company has received approval of Construction Documents from Delta and the Lessor, and formal delivery of the assigned Premises or a portion thereof:
- D. The Company has submitted to Delta the following information:
  - 1) The names and addresses of the general, HVAC, plumbing and electrical contractors the Company intends to engage in the construction of its assigned Premises
  - 2) A detailed CPM construction schedule 48 hours before work begins and routinely thereafter, or as requested by Delta, showing progress to date and the remaining anticipated work schedule and completion date of all construction work, fixture work and the date of the Company's projected opening for business - failure to submit detailed construction schedule updates as requested by Delta shall be cause for Delta to stop construction until a detailed, updated schedule is submitted and accepted by Delta (Any resulting claims by the general contractor for additional monies and or time will be at the sole and complete expense of the Company, no matter the duration of the work stoppage.)
  - 3) Estimated construction costs; including architectural, engineering and contractor's fees

- 4) The Company's contractors' performance and/or labor and material bonds, if so required by Delta, or any other bond to be furnished by the Company as may be required by Delta to ensure the faithful performance of the work in accordance with the drawings and specifications approved by Delta and the Lessor
- 5) The Company has submitted to Delta evidence of insurance as outlined in the insurance section of the Lease Agreement
- 6) The Company has submitted Company's *MBE/WBE* Construction Program
- 7) The Company has submitted copies of No Lien Agreement(s) with its Contractor(s).

#### **H. Tenant Construction**

The Company's interior finishes, fixtures, signing, etc. shall be installed in strict accordance with the plans and specifications as approved by Delta and the Lessor and shall meet all requirements of applicable laws, statutes, regulations, ordinances and/or codes; including the Lessor's Tenant Construction Review Manual including the following:

- A. Non-Combustible Construction - All Company construction shall be non-combustible, including any materials used above the ceiling or concealed in the walls of the assigned Premises. Certifications of acceptability for all interior finishes/materials (i.e., carpet, wall covering, acoustic ceiling tile, etc.) must be submitted to the Lessor for review and approval. All partitions must be of metal stud and gypsum board construction. All wood and wood products must be fire retardant and the use of fire retardant lumber is limited to use as "blocking".
- B. Demising Partitions - The Company shall install fire rated gypsum board on metal stud demising wall partitions to create a rated separation between the assigned Premises and adjacent Company premises, and/or exit and/or service corridors, in accordance with Code requirements for separations. The Company will be responsible for installation of all fire stopping, fire safing and/or sealant required between the top of partition framing and/or around penetrations through partitions to ensure integrity of assembly rating (U.L. #U465, or equal) The Company may not, under any circumstances, attach anything to a Base Building fire rated shaft wall. Shaft walls are indicated on the Base Building Construction Documents; copies of which may be obtained from Delta at the Company's written request.
- C. Floor Slab Penetrations - The Company is responsible for providing all floor slab penetrations associated with the Company work. All openings through structurally-supported floors must be cored, sleeved, grouted, sealed and made waterproof. Sleeves, except for water closets, must extend at least two inches (2") above the finished floor. The locations of all floor openings must be approved by Delta in writing in advance. Company is required to take whatever measures are necessary, including but not necessarily limited to those measures prescribed by Delta in the exercise of its reasonable judgment to ensure that core drilling will not damage Base Building structure and other systems, or other Premises below. The cost of tests and/or repair of any damage resulting from Company work will be borne by the Company. Core drilling approved in

advance by Delta, will only be permitted during off peak, non-business hours.

- D. Floor Slab Waterproofing - Unless otherwise approved by Delta in writing, each Company shall apply a waterproofing membrane to the "wet" area of their assigned Premises. Complete specifications and manufacturer's product data for the intended waterproofing product shall be submitted to Delta by the Company, for approval, with the Construction Documents and Specifications submittal. Area for waterproofing shall be clearly defined and shown on the construction documents.
- E. Floor Transition Strip - Company's shall be required to install a transition strip within, or adjacent to, their assigned Premises.
- F. Company Improvement Supports - All improvements, other than ceilings, mechanical ductwork, piping, electrical conduit and light fixtures, shall be floor-mounted unless written, advanced approval is obtained from Delta for alternative means of support. All means of suspending the aforementioned assemblies must be connected to the roof or floor structure above in accordance with applicable building laws, ordinances, regulations, codes and Lessor criteria. Any Company Improvements which require structural modification of the Base Building are not permitted unless specifically approved in writing by Delta. If approved by Delta, Delta reserves the right to perform said structural work for the Company, at Company's sole expense. Company shall also be responsible for paying any and all costs associated with Delta's review of the proposed structural design, including all associated professional consulting fees, testing fees and inspection fees.
- G. Expansion Joints - Should a Base Building expansion joint be located within a Company assigned Premises, the Company shall provide and install a complete expansion joint cover assembly, including fire safing, which is compatible with the block out provided in the Base Building floor structure and the Company's floor finish. Wall and/or ceiling joint cover assemblies shall also be provided by the Company as required.
- H. Service Door Hardware - For premises provided with a fire rated service door, the Company shall furnish and install all required rated hardware.
- I. Ceilings - A non-combustible ceiling system shall be installed throughout the entire assigned Premises by the Company unless specifically accepted by Delta in writing. It is the Company's responsibility to verify that the finished ceiling height selected is not in conflict with Base Building structure, mechanical equipment, ductwork, pipe mains, etc. Access to Base Building mechanical systems above the Company's ceiling shall be provided by the Company in locations designated by Delta and/or as required by Base Building systems. To verify location(s) of such access, if any, the Company shall meet with Delta's Representative prior to commencing construction; at which time Delta will provide the Company with written itemization of all access requirements. Upon completion of the work and prior to taking occupancy of the assigned Premises, the Company shall meet again with the Delta and provide written verification that all required access has been provided. It is strongly recommended that the Company consider a fully accessible ceiling system for the assigned Premises.
- J. HVAC - The Company shall provide the supply and return distribution network within the Company assigned Premises, from the termination

point(s) of the Base Building system(s). The distribution network shall include any ductwork, VAV boxes, dampers, diffusers, registers, grilles, temperature controls, reheat coils, etc., required to make the system complete, including any fire dampers or smoke damper. Should the Company require air quantities in excess of those provided by Delta, the Company may request permission to install auxiliary HVAC unit(s). If Delta approves said auxiliary unit(s), the costs of the unit(s), any related devices and all installation shall be borne by the Company. No return air for any Company space shall pass through another Company's space, unless pre-approved by Delta in writing. Suspended ceiling spaces cannot be used as return air plenums, unless pre-approved by Delta in writing. The Company will be responsible for providing return air transfer openings (with combination fire and smoke dampers in rated construction) to allow a return air path back to the Base Building air handling unit if no return ductwork is provided by Delta. Combination fire and smoke dampers shall be equipped with fire stat and temperature sensors and tied to local or central fire alarm panels. No openings for fans, vents, louvers, grilles or other devices shall be installed in any demising partition, exterior wall, floor or roof without Delta's written approval. Air balancing of HVAC, exhaust and makeup air systems is required and shall be the responsibility of the Company.

- K. Walk-In Coolers - Use of walk-in coolers, refrigerators or freezers requires specific approval of Delta. Where approved, such equipment, which must be air cooled, shall be provided with insulated floor systems as recommended by the equipment manufacturer, and a water proofed floor beneath. Any modifications required to Base Building structure to accommodate loads of such equipment shall be at Company's expense and be subject to Delta's written approval. Delta reserves the right to perform said structural work at the Company's expense, including consulting fees, testing fees and inspection fees. Condensate lines from Company refrigeration and/or air conditioning systems must terminate within the Company assigned Premises to a sanitary drain.
- L. Cooking Exhaust - The Company shall be responsible for the design and installation of all exhaust systems, taking care to provide negative air pressure to ensure that there is no migration of odors from the assigned Premises into the Common Areas of the Delta Facilities. HVAC calculations, signed & sealed by a professional engineer, shall be submitted to Delta for review. Companies with kitchen exhaust systems are required to provide an automatic fire suppression system at the exhaust hood. Kitchen exhaust hoods must be approved for use in New York City. Water-wash type hoods are not required, but are encouraged for use. The Company is required to have the auto fire suppression system alarms tied into the Base Building fire alarm system.
- M. Roof Penetrations - All modifications to the Base Building roof structure required for installation of any roof top units (i.e. air handling, makeup air, exhaust fans, etc.), are to be designed by a licensed Architect *and/or* Engineer and are subject to Delta's review and approval of: structural design calculations, location(s) and proposed roof curb and flashing details. If approved by Delta, Delta reserves the right to perform said structural work for the Company, at Company's sole expense. Company shall also be responsible for paying any and all costs associated with

Delta's review of the proposed structural design, including all associated professional consulting fees, testing fees & inspection fees. All related modifications to the Base Building's roof membrane are to be completed by Delta at Company's expense. The Company's Contractor will be responsible for coordinating such work with Delta's Representative. Alternatively, with Delta's advance written approval, Company's contractor can perform the roof work under the supervision of the roof manufacturer's warrantee company if Delta is provided with a warrantee inclusion.

- N. Water Service - The Company shall provide accessible main water shut-off valves, for both the hot and cold water services within the assigned Premises, in addition to the valves installed in the Base Building systems. Any Company water service work must meet all applicable Plumbing Code requirements.
- O. Grease Traps - All waste piping designed and installed for the discharge of material from kitchen equipment, excepting dishwashers, shall discharge through a grease interceptor, provided and installed by the Company, prior to connection to the Base Building sanitary sewer system. Grease interceptors shall be contained completely within the assigned Premises and above the floor slab.
- P. Natural Gas Service - The Company shall install all natural gas piping within the assigned Premises, from the termination point of the Base Building natural gas system. The Company shall also provide an accessible main gas shut-off valve within the assigned Premises. All natural gas work within the Company assigned Premises must be coordinated with Delta's Representative.
- Q. Electrical Service - The Company shall furnish and install all electrical facilities required for the assigned Premises. All transformers shall be floor mounted on vibration isolators and contained completely within the assigned Premises. All sign, logo and storefront illumination shall be controlled by a seven (7) day time clock. Time settings shall be established by Delta.

#### **Scheduling of Work**

Scheduling and coordination of all construction shall be mutually agreed upon by the Company, TSA and Delta. Work shall be coordinated so that the Company's construction will not interfere with or delay the completion of any other work in the Premises. Should a Delta contractor be delayed or interfered with as a result of the Company's failure or inability to schedule joint work in a compatible manner, the Company shall be responsible for any and all increased costs incurred by Delta.

#### **No Tom-Foolery**

The Company shall enforce strict discipline and good order among the employees of the Company's contractor and subcontractors. The Company shall not employ any unfit person or anyone not skilled in the work he or she is performing, or any worker who is incompatible with the balance of the work force, or who will cause, or whose presence will cause, labor disputes or work stoppages.

#### **Condition of Premises and Deliveries**

The Company must erect at its sole cost and expense a satisfactory dust-proof storefront barricade. Delta reserves the right to approve the design and construction of

the barricade and all finishes and signage applied to the barricade. Company shall place a sign on the construction barricade door indicating an after-hours contact name and phone number. Each of Subleases' construction contractors shall post a notice on the exterior construction wall advising the name, address, and telephone number of the appropriate contact for notification in the case of an emergency.

The Company or its contractors shall contain all construction materials, equipment, fixtures, merchandise, shipping containers and debris within the assigned Premises. Terminal public areas, sidewalks, arcades, parking lots, deliveries, lanes, and the exterior of the building shall be clear of the Company's equipment, merchandise, fixtures, refuse, and debris at all times. Trash storage within the assigned Premises shall be confined to covered metal containers. The Company's contractor is to provide fire extinguishers at the job site during construction.

The Company shall maintain the assigned Premises in a clean and orderly condition during construction and merchandising. The Company shall promptly remove all unused construction materials, equipment, shipping containers, packing, debris and flammable waste from the area. The Company, at its own cost, shall be responsible for and shall keep the assigned Premises and the surrounding areas free from all debris (broom cleaned daily) during its construction period. Upon the Company's failure to do so, Delta shall have the right to remove said debris and to charge the Company for the cost of said removal and cleanup.

In the event that the Company is notified of any violations of codes, ordinances, regulations, requirements or guidelines, either by government authorities, by Delta or by the Lessor, the Company shall, at its expense correct such violations within ten (10) calendar days after such notification. Should the Company fail to correct such violations within ten (10) calendar days, Delta may correct such violations at the Company's expense.

All construction materials for the Company's assigned Premises shall be delivered and hauled via means approved by Delta and in accordance with TSA and the facility rules and regulations

#### **Specific Approvals**

The Company's contractor and subcontractors shall be required to obtain specific approval from Delta for the following:

- A. Access route on to site
- B. Area for storage of material, tool gang boxes,
- C. Unloading areas and passage around and through buildings
- D. Area for employee parking
- E. Working/ Demolition hours
- F. Construction dumpster location
- G. Size and location of temporary signage

#### **I. Post-Construction Requirements**

Upon completion of the Company's construction and fixture work, Delta shall inspect the assigned Premises; and if such Premises are acceptable, shall issue a Letter of Acceptance of said assigned Premises. The issuing of such a letter shall be contingent upon the following:

- A. The satisfactory completion by the Company of the work including correction of deficiencies and inconsistencies with approved Construction Documents and Specifications
- B. Company has cleaned and returned all areas around the construction barricade to pre-construction condition
- C. The Company Premises pass final inspection by the Lessor

### **Inspections and Certifications**

Before the Premises will be allowed to open for business, the Company is responsible for passing both a preliminary final inspection and a final inspection by the Lessor.

The procedure for obtaining a preliminary final inspection by the Lessor is as follows. After the work is substantially complete and all life safety systems (i.e. fire alarm, smoke detection, A/C fan shut down, exit and emergency lighting, etc.) are operational, the Company's AOR must contact and request the Port's Resident Engineer's Office to schedule a preliminary final inspection by the Lessor. If the Company work passes the preliminary final inspection, then a final inspection may be requested. If the work does not pass the preliminary inspection, then the deficient work must be corrected and **another** preliminary final inspection must be scheduled.

The procedure for obtaining a final inspection by the Lessor is as follows. After substantial completion, the Company's AOR must inspect the work and, if found acceptable, must submit two (2) original copies of an Architect's Certification of Final Inspection to Delta. Delta, as Applicant, will submit the certifications to the Lessor. The Architect's Certification of Final Inspection, which must conform to the Lessor's standard format and language, certifies that the architect of record has inspected the completed work, that it conforms to the approved Construction Documents and Specifications and to all applicable building laws, codes and regulations, that all Rider comments have been resolved to the satisfaction of the Lessor, and that it is ready for final inspection by the Lessor. Accompanying the Architect's Certification and request to the Port, the AOR shall also submit, in an indexed, formatted booklet, the various Controlled Inspection Reports by the independent testing & inspection agent/company for the Company. The AOR shall submit these reports, covered by the AOR's own signed and sealed certification, attesting to the completeness, accuracy and acceptance of the submitted testing reports. Three bound copies shall be delivered to the Port and two bound copies of all the AOR certifications, letters and inspection reports shall also be delivered to Delta or Delta's Representative.

The Company should be aware that the normal time frame between a successful preliminary final inspection and a final inspection is approximately one (1) to one and one-half (1½) weeks.

### **Additional Required Documents**

Prior to the Premises opening for business, the Company shall also submit the following to Delta:

- A. A copy of the Company Contractor's Plumbing Certificate
- B. A copy of the Company Contractor's Electrical Certificate
- C. Three (3) copies of a certified air balance report.

No less than sixty (60) days after the Premises are opened for business Company shall submit the following to Delta:

- A. A copy of Release of Liens, signed by the contractor and subcontractors and suppliers showing that all said persons have been compensated in full.

No less than one hundred and twenty (120) days after the Premises are opened for business Company shall submit the following to Delta, in addition to the Port Authority's as-built documentation requirements:

- A. Three 11 x 17 sets of all "As-Built" drawings and three (3) CD copies of PDFs with specific emphasis on the exact locations of all utility lines. The As-Built documentation shall be accompanied by a certification from the AOR attesting to the accuracy and acceptance of the as-built information.
- B. A certified statement from the Company verifying the actual cost of the project.
- C. Submittal by the Company to Delta of warranties for not less than one year against defects in workmanship, materials and equipment

### III. Gate Holdroom Area Janitorial Roles and Responsibilities

#### A. Introduction

The Gate Holdroom Area Janitorial Roles and Responsibilities should be read and understood by Company as defining the specific performance standards of Company in maintaining Gate Holdroom Areas and as defining the specific role of Delta in maintaining Gate Holdroom Areas. The responsibilities are outlined in the table below.

<b>Floors:</b>	<b>Company</b>	<b>Delta</b>
Sweep (Exhibit B, 2.2.1a)	as needed	
Vacuum Carpet (Exhibit B, 2.2.1b)	as needed	1 x Day
Floor Scrubbing (Exhibit B, 2.2.1c)		
Damp Mop Floors (Exhibit B, 2.2.1d)		as needed
Shampoo Carpeting (Exhibit B, 2.2.1e)		4 x year
Spot Clean Carpet (to remove stains and gum) (Exhibit B, 2.2.1f)		as needed

<b>Metal Surfaces Cleaning:</b>	<b>Company</b>	<b>Delta</b>
Clean and Disinfect Drinking Fountains (Exhibit B, 2.2.3)		2 x day

<b>Furniture/Cabinet/Ticket Counter Cleaning:</b>	<b>Company</b>	<b>Delta</b>
Bus and Wipe Tables (Exhibit B, 2.2.4)	as needed	
Bus and Wipe Counter Tops (Exhibit B, 2.2.4)	as needed	
Wipe Desk Tops (Exhibit B, 2.2.4)		as needed
Wipe Telephones (Exhibit B, 2.2.4)		as needed
Wipe Phone and Jetway Control Panel (Exhibit B, 2.2.4)		as needed
Clean Monitors (Exhibit B, 2.2.4)		1 x shift

<b>Ash/Waste Receptacles:</b>	<b>Company</b>	<b>Delta</b>
Empty Waste Receptacles and Replace Liners (Exhibit B 2.2.5 b)	as needed	
Clean Interior and Exterior of Waste Receptacles (Exhibit B 2.2.5 b)		1 x month

<b>Policing:</b>	<b>Company</b>	<b>Delta</b>
Collect Paper and Trash (Exhibit B 2.2.6)	as needed	

<b>Damp Wipe:</b>	<b>Company</b>	<b>Delta</b>
Damp Wipe Ledges (Exhibit B, 2.2.8)		as needed
Dust/Clean Counters and Tables	as needed	
Dust other surfaces		as needed
Dust Railings (Exhibit B, 2.2.8)		1 x week

<b>Wall Cleaning:</b>	<b>Company</b>	<b>Delta</b>
Spot Clean Walls, Doors and Door Frames (Exhibit B, 2.2.9)		as needed
Remove Fingerprints, Smudges, etc. from Walls and Doors (Exhibit B, 2.2.9)		1 x week

<b>Ceiling Maintenance/High Dusting:</b>	<b>Company</b>	<b>Delta</b>
Clean all Ceiling Vents (Exhibit B, 2.2.10)		1 x month
High Dust Ceiling Vents and Light Fixtures (Exhibit B, 2.2.10)		1 x month

<b>Bathroom Cleaning:</b>	<b>Company</b>	<b>Delta</b>
Spot Clean Restrooms and Empty Trash		2 x shift
Clean and Disinfect Counters, Sinks, Toilets and Urinals (Exhibit B, 2.2.2)		1 x shift
Clean Mirrors		1 x shift
Clean and Disinfect Restroom Floors and Walls		1 x shift
Restock Restroom Supplies		as needed

<b>Other Required Task: Please Specify</b>	<b>Company</b>	<b>Delta</b>
Clean visible carpet spots to prevent spots from setting	as needed	
detail clean & scrub gate podiums and back walls		4 x year
Clean back offices		1 x shift
clean gate break room		1 x shift



EXHIBIT E  
FORM OF MONTHLY REPORT  
Food and Beverage Premises

Restaurant and Gross Sales (list separately):

Monthly Total Gross Sales (sum of above)	A	\$ _____
Monthly Enplanements (as reported by Delta)	B	_____
Monthly Sales per Enplanement	C=A/B	\$ _____

Rent Increments calculated from table 7.1

Increment 1 rent (SPE ≤ \$5.50)	D	\$ _____
Increment 2 rent (SPE \$5.51-\$6.50)	E	\$ _____
Increment 3 rent (SPE \$6.51-\$9.00)	F	\$ _____
Increment 4 rent (SPE ≥\$9.01)	G	\$ _____

Monthly Total Percentage Rent	H=D+E+F+G	\$ _____
Monthly Minimum Annual Payment (1/12 <sup>th</sup> MAP)	I	\$ _____
Variable Payment (>= 0)	J=H-I	\$ _____
Total Rent Due	K=I+J	\$ _____

Delta's Share of Payments

80% of Total Rent due	80% x K	\$ _____
40% of Advertising Revenue		\$ _____
<b>Total Delta Payment</b>		<b>\$ _____</b>

Lessor's Share of Payments

20% of Total Rent due	20% X K	\$ _____
20% of Advertising Revenue		\$ _____
<b>Total Lessor Payment</b>		<b>\$ _____</b>

The undersigned authorized officer of LaGuardia USA, LLC hereby certifies that the foregoing report for the month of \_\_\_\_\_, 20\_\_\_\_\_ is true and correct.

By: \_\_\_\_\_

EXHIBIT F  
**As-Built Drawings**

EXHIBIT G

**Company's Proposal**

EXHIBIT H

**Landlord's Work**

EXHIBIT I ("EYE")  
ACKNOWLEDGMENT OF OPENING DATE

[Name of Airport]

1.1 Name and Notice Address of Parties:

(a) Delta: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.2 Permanent Concession Site(s):

\_\_\_\_\_

1.3 Opening Date:

\_\_\_\_\_

The above terms are incorporated into this Acknowledgment of Opening Date as indicated above and referenced herein.

This Acknowledgment of Opening Date is made with reference to that certain Concession Agreement (the "Agreement") between the party designated in Section 1.1(a) ("Delta") and the party designated in Section 1.1(b) ("Company") dated as of \_\_\_\_\_, regarding the Premises that include the Permanent Concession Site(s), as defined in the Agreement, identified in Section 1.2. Company certifies to Delta and Lessor, as defined in the Agreement, the following:

2.1 Company has accepted possession of the Permanent Concession Site(s) and acknowledges that the Permanent Concession Site(s) are as represented by Delta and in good and sanitary order, condition and repair; and that the improvements, if any, required to be constructed for Company by Delta under the Agreement have been constructed and are satisfactorily completed in all respects.

2.2 The Opening Date for the Permanent Concession Sites identified in Section 1.2 is as set forth in Section 1.3 hereof.

**[NAME OF COMPANY]**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT J

### LETTER OF CREDIT REQUIREMENTS

- All original Standby Letters of Credit (L/C) are reviewed, approved, and held by Delta Air Lines, Inc. ("Delta") Treasury Department - 857 ATG.
- Delta's current ISP98 format (defined below) is now required for the issuance of an L/C.
- If the L/C is to be issued outside of the U.S., Delta would prefer that it be obtained directly from the local Citibank or subsidiary branch. If the local Citibank or subsidiary branch is unavailable or is not willing to issue the L/C on the applicant's behalf, then the L/C may be issued from a local bank of the applicant's choosing; however, in this case the L/C must be 'confirmed' by Citibank N. A., New York, made payable at Citibank, N. A., New York and expire at Citibank, N. A., New York. If the applicant's bank does not have an affiliation with Citibank they may use another bank located in the U.S. other than Citibank to confirm the L/C. An 'Advised' L/C is not acceptable.
- The L/C should be effective for a one year period; however, it should also contain an "evergreen" provision which will provide for an automatic annual renewal of the document unless the issuing bank gives a 90-day advance written notice of cancellation before the date of termination, to both Delta and the applicant.
- Payment of all fees including the direct fees of the primary issuing bank and the confirmation fees, if applicable, will be the applicant's responsibility.
- The L/C must be in the English language.
- The L/C must be issued in U.S. dollars.
- The Beneficiary shall be "Delta Air Lines, Inc." and any successor or assignee.
- Partial drawings shall be permitted under the L/C.
- The L/C must be issued subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"), using Delta's **ISP98 Standby Letter of Credit Form**. If the issuing or confirming bank is not willing or able to use the ISP98 standards and prefers to use the UCP for Documentary Credits (1993 Revision) I.C.C. Publication No. 500, Delta's **UCP 500 Standby Letter of Credit Form** is required to be used for the issuance of the L/C.
- The L/C is to be subject to the laws of the State of New York and U.S. Federal law only. Other State laws will not be acceptable. Country law prevails only if issued by a local in country Citibank, N.A. Branch.
- Any changes by the bank, to the Delta 'format' should be sent to Treasury (404 715-3110) for approval prior to the issuance of the document. Once received, it

the L/C does not meet Delta's standards, an 'amendment' to the original L/C will be required, which must include the necessary changes.

- The L/C must be accompanied by a letter authorizing the signature(s) on the original L/C, using Delta's **Certification Letter for Irrevocable Standby Letter of Credit Form**. If the bank will not provide the Certification Letter, then a copy of the Bank's Corporate Resolution, indicating authorization of signature(s), must be included.
- If replacement of an existing L/C is necessary, Delta will retain the original L/C until the replacement document is received. The bank is authorized to add a paragraph to the new L/C stating that the new document will become effective upon receipt by the bank, of the old L/C.

If you, the applicant or their bank have any questions, you may contact Susan Faircloth at 404 715-5639, by fax at 404 715-3110 or Charles Dincol at 404 773-4180.

ISP98 Standby Letter of Credit Form

(Issuing Bank's Letterhead)

Fax Number:

\_\_\_\_\_  
Telex Number:

\_\_\_\_\_  
(Date of Issuance)

TO: DELTA AIR LINES, INC. ("Beneficiary")  
Attention: Manager - Treasury  
Treasury Department 857  
Post Office Box 20533 (30320-2533)  
1030 Delta Boulevard

Atlanta, Georgia 30354-1989

FOR: \_\_\_\_\_  
("Applicant")

\_\_\_\_\_  
\_\_\_\_\_  
(Applicant's Address)

Issuer's Credit No.: \_\_\_\_\_

Expiration Date: \_\_\_\_\_  
("Expiration Date")

By order and for the account of the above referenced Applicant,  
\_\_\_\_\_ [name of issuing bank] (the "Issuer")  
hereby issues this irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the  
"Credit") in favor of the above referenced Beneficiary in the amount of  
\_\_\_\_\_ United States Dollars  
(U.S.\$ \_\_\_\_\_), effective immediately and expiring on the above  
referenced Expiration Date.

Funds under this Credit are available to the Beneficiary against presentation of its  
draft(s), purportedly signed by Beneficiary's authorized representative, drawn on Issuer  
and bearing the clause "Drawn under Standby Letter of Credit No. \_\_\_\_\_".  
Partial drawings are permitted hereunder.

All charges and fees are for Applicant's account.

This Credit will be automatically renewed for a one (1) year period upon the Expiration  
Date and upon each anniversary of the Expiration Date, unless at least ninety (90) days  
prior to the Expiration Date or anniversary thereof Issuer notifies Beneficiary and  
Applicant in writing by registered mail or reputable courier service that Issuer elects not  
to so renew this Credit.

Beneficiary's draft(s), presented in accordance with the above stated terms and  
conditions of this Credit, shall be duly honored if presented on or before the Expiration  
Date at the counters of the (Issuing Bank or the Confirming Bank) located at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Credit is issued subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"). As to matters not covered by ISP98, the laws of **[the State of New York and U.S. Federal law shall prevail (if issued or confirmed within the borders of the USA) OR the Issuing Bank's country shall prevail (only if the Letter of Credit is issued outside the USA by a local Citibank branch)]**.

Sincerely,

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Counter Signature

**Certification Letter for Irrevocable Standby Letter of Credit  
(Date of Effectiveness)**

Treasury - 857  
Delta Air Lines, Inc.  
Post Office Box 20533 (30320-2533)  
1030 Delta Boulevard  
Atlanta, Georgia 30354-1989

Account: Applicant

Attention: Manager - Treasury

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(Issuing Bank Name)

at the request  
of

---

(Applicant)

has provided its irrevocable Standby Letter of  
Credit, No.

\_\_\_\_\_ which is attached hereto in the  
amount of

US

Dollars  
(\$

)  
date  
d

\_\_\_\_\_ in your favor.

This will certify  
that

---

(Name and Title of bank officer)

is authorized to provide and execute the attached irrevocable Standby Letter of Credit, that the signature appearing on said Standby Letter of Credit is authentic, and that the bank has complied with all Federal Deposit Insurance Corporation (or state the Country's applicable banking regulation) requirements and other applicable laws in connection with the issuance of such Standby Letter of Credit.

BANK SEAL

Sincerely,

---

Certifying Signature

---

Title of Certifying Bank Officer

Attachment: Standby Letter of  
Credit No.

---

