

LEASE AND CONCESSION AGREEMENT

BY AND BETWEEN

**LEHIGH NORTHAMPTON AIRPORT
AUTHORITY**

AND

Effective Date: _____

DRAFT

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EXHIBITS

- Exhibit A** Concession Locations
- Exhibit B** Support and Storage Areas (To Be Added If Applicable)
- Exhibit C-1** Daily Gross Sales Report
- Exhibit C-2** Monthly Rent Report
- Exhibit C-3** Monthly Concession Sales by Unit Report
- Exhibit C-4** Sales by Product Type Report
- Exhibit D** Form of Letter of Credit – Standby, Irrevocable Location No. _____
- Exhibit D-1** to Form of Letter of Credit (Form of Draft)
- Exhibit D-2** to Form of Letter of Credit – Certificate
- Exhibit D-3** Form of Location - Certificate
- Exhibit E** Contract Penalties
- Exhibit F** Required Federal Provisions
- Exhibit G** DBE Participation Calculation
- Exhibit H** Request for Proposals
- Exhibit I** Operator’s Response to RFP
- Exhibit J** Guaranty of Performance
- Exhibit K** Authority’s Alcohol and Controlled Substances Policy (In Development)
- Exhibit L** Authority’s Tenant Design Standards (To Be Added If Applicable)

LEASE AND CONCESSION AGREEMENT

THIS LEASE AND CONCESSION AGREEMENT (the “*Concession Agreement*”) is made and entered into as of the ___ day of _____, 2023 (the “*Effective Date*”), by and between **THE LEHIGH NORTHAMPTON AIRPORT AUTHORITY**, a municipal authority existing under the laws of the Commonwealth of Pennsylvania (the “*Authority*”), and _____, a ___ corporation (the “*Operator*”).

WITNESSETH:

WHEREAS, Authority is the operator of the Lehigh Valley International Airport located in Allentown, Pennsylvania (the “*Airport*”) and, in connection with its operation of the Airport, Authority leases space within the Terminal and grants concession rights for the business operations within such space; and

WHEREAS, Operator is engaged in the full-time business of developing and operating food service, retail, and services concession programs for airports and/or transportation terminals, in accordance with the terms and provisions of this Concession Agreement; and

WHEREAS, Operator submitted the Proposal in response to Authority’s RFP seeking the rights to be granted by Authority pursuant to the terms and provisions of this Concession Agreement within the Premises; and

WHEREAS, Authority has agreed to accept the Proposal and to rent and lease to Operator, and Operator has agreed to take and rent from Authority, the Concession Areas for the purpose of developing, leasing and operating food service, convenience, and specialty retail concessions, subject to the terms and provisions of this Concession Agreement;

NOW, THEREFORE, for and in consideration of the covenants of Operator contained herein, including without limitation, construction of the Initial Capital Improvements and payment of Rent, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and Operator hereby agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 Definitions. Definitions of capitalized terms used in this Concession Agreement and not otherwise defined in this Concession Agreement are set forth in **Attachment 1** hereto. Capitalized terms used and in an exhibit to this Concession Agreement, unless specifically defined for the purpose of such exhibit, shall have the definitions ascribed to them elsewhere in this Concession Agreement or in **Attachment 1** hereto.

Section 1.2 Interpretation. All terms defined in this Concession Agreement and all pronouns used in this Concession Agreement shall, unless the context clearly requires otherwise, be deemed to apply equally to the singular and plural forms and to all genders. The term “or” is specifically used in its logical sense and, as such, is satisfied whenever one or more of its operands are true. Except as otherwise expressly provided herein, this Concession Agreement shall be interpreted in accordance with the following: (i) all accounting terms not otherwise defined herein or in the exhibits hereto have the meanings assigned to them in accordance with GAAP; (ii) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Concession Agreement as a whole and not to any particular article, section or other subdivision; (iii) the words “include”, “includes” and “including” herein or in **Attachment 1** hereto or the

exhibits hereto shall be interpreted as if followed by the phrase “without limitation”; (iv) references to statutes, regulations or ordinances are to be construed as including all provisions consolidating, amending or replacing the referenced statute, regulation or ordinance; (v) a reference to a “Section” or “Article” shall mean a section or article of this Concession Agreement unless otherwise expressly stated; and (vi) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments to or changes in such agreements or instruments entered into in accordance with their respective terms. This Concession Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

ARTICLE II

INCORPORATION OF PROPOSAL AND RFP

Section 2.1 Incorporation of RFP and Proposal. The RFP and the Proposal are incorporated and made a part hereof by reference and attached hereto as **Exhibits H and I**, respectively. Operator shall be obligated to meet all specifications described in the RFP and the Proposal pertaining to the Concession Program and any written clarification thereto accepted by Authority; provided, however, that in the event an express provision of this Concession Agreement is in conflict with any provision of the RFP and/or the Proposal, this Concession Agreement shall govern and control unless Authority determines in writing that the provision in the RFP and/or the Proposal offers a higher level of service to Authority than indicated in the conflicting provision of this Concession Agreement, in which case such provision in the RFP and/or Proposal shall govern and control.

ARTICLE III

DEMISE OF PREMISES

Section 3.1 Demise of Premises; Lease Term.

(a) Subject to the terms and provisions of this Concession Agreement, Authority hereby rents and leases to Operator and Operator hereby takes and rents from Authority, the following (collectively, the “*Premises*”): (i) the Concession Locations, (ii) the Support and Storage Areas and (iii) the non-exclusive right and privilege, for the benefit of Operator and its employees, guests, patrons, invitees, suppliers and other authorized individuals, to use other areas of the Terminal in common with other tenants and occupants thereof, including without limitation restrooms, corridors and other similar public areas, and to use the Airport roadways, as they may exist from time to time, for ingress to and egress from the Concession Locations and Support and Storage Areas, all to the extent reasonably required for ingress to and egress from the Concession Locations and Support and Storage Areas, and subject to Applicable Laws.

(b) The Term of this Concession Agreement is that period beginning on the Effective Date and ending at 11:59 p.m. on the fifteenth (15th) anniversary of the Commencement Date, unless otherwise extended or terminated as provided for herein. By way of example only, if the Effective Date of this Agreement is April 15, 2023, and the Commencement Date is June 15, 2023, the Term would expire as of June 15, 2038.

Section 3.2 Concession Locations. The Concession Locations shown on **Exhibit A** hereto, as they may be modified pursuant to this ARTICLE III, are leased to Operator within the Terminal beginning on the Effective Date. Operator shall be responsible for the coordination, design, and completion of its Initial Capital Improvements in each Concession Location in accordance with Authority’s design standards / project requirements, as these may be formulated and revised from time to time (“Tenant Design Standards”) and within 120 days of the Effective Date. Any such Tenant Design Standards shall be added to this Agreement as Exhibit L at the time they become effective, and the Authority

may update and amend Exhibit L in its reasonable discretion.

No more than ten percent (10%) of the square footage of each Concession Location may be used for office and/or storage, provided such use is directly related to such Concession Location and such square footage does not directly abut the public circulation areas of the Terminal.

Section 3.3 Support and Storage Areas. The Authority currently does not have assigned Support and Storage Areas available for use in connection with Operator's Concession Program. Should such Support and Storage Areas become available, the Authority shall notify Operator in writing of such availability and the rental rate for the Support and Storage Areas, which shall be established annually by the Authority's Rates and Charges Resolution. Should Operator desire to use such space, Operator shall pay the established rental rate and the parties shall amend this Agreement to effectuate the addition of the Support and Storage Areas, including but not limited to the addition of **Exhibit B**. Operator, at its sole expense, will be responsible for constructing office space and any other desired improvements in the Support and Storage Areas to meet its needs. Any such improvements are subject to the prior written approval of the Authority in accordance with the provisions herein. The Authority may, in its discretion and upon Operator's request, make additional Support and Storage Areas available to Operator at the rate established annually by the Authority's Rates and Charges Resolution.

Section 3.4 Changes to Premises. This Concession Agreement shall be supplemented to reflect any additions, deletions, or modifications to the Concession Locations. Any addition, deletion, or modification to the Concession Locations under this **Section 3.4** shall not affect Operator's payment obligation pursuant to the terms and provisions of this Concession Agreement unless such change results in a change in the total square footage of the Concession Locations of greater than 15% of the Concession Locations as shown on **Exhibit A** hereto. If the change results in the addition of more than 15% of the total square footage of the Concession Locations as shown on **Exhibit A** hereto, then the annual Minimum Annual Guarantee will be increased in proportion to the amount of such percentage increase. If the change results in a reduction of greater than 15% of the total square footage of the Concession Locations as shown on **Exhibit A** hereto, then the annual Minimum Annual Guarantee will be decreased in proportion to the amount of such percentage reduction until sufficient space of similar quality, as determined by Authority, is provided to Operator as an addition to the Concession Locations.

Section 3.5 Modification to Premises; Relocation. Authority reserves the right, in its sole discretion, to modify the Terminal, including by reducing, reconfiguring, or otherwise modifying the Concession Locations and/or Support and Storage Areas due to Airport development/construction, operational necessity, or security or safety considerations. In the event of any such modification or reduction that Authority determines may materially affect Concession Operations, Operator shall be given not less than 30 days' prior written notice thereof unless circumstances beyond the control of Authority occur (*e.g.*, because of a direct or indirect requirement of the TSA or other Governmental Authority), and Authority has the right, but not the obligation, to make reasonably comparable space available within the Terminal for the relocation of Concession Operations. In the event that (i) a modification of the Terminal renders the Concession Locations no longer commercially viable for Concession Operations within the Concession Locations, as determined by Authority, or Authority reduces the area of the Concession Locations by 50% or more of the total Concession Locations as leased to Operator as of the Full Turnover Date, and (ii) Authority does not provide reasonably comparable space within the Terminal to relocate Concession Operations from the Concession Locations within 60 days after such modification or reduction, then Operator shall have the right, by written notice to Authority given not more than 30 days after the expiration of such 60-day period, to terminate this Concession Agreement as of a termination date specified in such notice that is not less than 30

days after delivery of such termination notice. Upon a relocation of Concession Operations by Authority to another location within the Terminal pursuant to this **Section 3.5**, Authority agrees to reimburse Operator for the reasonable and proper moving costs for the affected movable furniture, equipment, appliances, carpeting, decorations, special finishing work, signs, trade fixtures and other items, as well as for the undepreciated value of the Capital Improvements that are not replaced or relocated, based upon the Depreciation Schedule therefor; provided, however, that Authority shall have no obligation to reimburse Operator for any such reasonable and proper moving costs or such undepreciated value of the Capital Improvements in the event of a termination of this Concession Agreement by Operator pursuant to this **Section 3.5**. For purposes of this **Section 3.5**, “reasonable and proper moving costs” shall mean the costs of moving furniture, equipment, appliances, carpeting, decorations, special finishing work, signs, trade fixtures and other items into the new location and moving and reinstalling telephone lines and computer equipment and connections, and reasonable expenses associated with reinstalling electrical connections and other utilities (if any). If Authority exercises its right to reduce the area of the Concession Locations, the portion of the Concession Locations so removed shall cease to be leased to Operator and shall no longer be subject to the terms and provisions of this Concession Agreement. Except for Authority’s obligation to reimburse Operator for reasonable and proper moving costs and the undepreciated cost of the Capital Improvements to the extent expressly provided in this **Section 3.5**, Authority shall not be liable to Operator for any damages, including damages for any inconvenience or loss of business, as a result of a modification of the Terminal or a reduction, reconfiguration, or modification of the Concession Locations.

ARTICLE IV **OPERATOR’S OBLIGATIONS**

Section 4.1 Operation of Concession Program. The Operator will develop, construct, operate, and maintain a First-Class Concession Program substantially in accordance with its Proposal, attached hereto as **Exhibit I** and hereby incorporated by reference, except as the Authority may otherwise agree to in writing.

Section 4.2 Operator Capital Investment Obligation. Operator shall invest no less than _____ Million Dollars (\$____,000,000) in Eligible Costs (the “*Minimum Investment*”) for Capital Improvements necessary for a First-Class Concession Program inclusive of but not limited to the specific requirements below in partial consideration for the rights granted hereunder (such improvements, the “*Initial Capital Improvements*”). Construction of all such Initial Capital Improvements shall be completed no later than 120 days following the Effective Date, and Operator shall provide proof of expenditures for Eligible Costs by no later than 210 days following the Effective Date. As further described in **Section 9.4**, should the Operator fail to expend the Minimum Investment, it shall be required to pay the difference between the amount actually expended on Initial Capital Improvements and the Minimum Investment, plus an additional ten percent (10%), to the Authority within thirty (30) days of demand by the Authority. Operator shall be responsible for constructing and furnishing office space and any other desired improvements within the Support and Storage Areas in order to properly support the concession business at the Airport; provided, however, that the cost of any such improvements to the Support and Storage Areas shall not count toward the Minimum Investment requirement set forth in this Section.

Section 4.3 Mid-Term Refurbishments. In addition to the Initial Capital Improvements, and subject to ARTICLE IX, Operator will complete additional Capital Improvements to the Concession Locations (the “*Additional Capital Improvements*”) totaling not less than twenty-five percent (25%) of the Eligible Costs of the Initial Capital Improvements in Constant Dollars (the “*Additional Minimum Investment*”) prior to the eighth (8th) anniversary of the Commencement Date. Operator shall provide written notice to the Authority of its proposed

Additional Capital Improvements no more than sixty (60) days prior to the seventh (7th) anniversary of the Commencement Date for the Authority's review and approval. The Authority reserves the right to reject any proposed Additional Capital Improvement that, in the Authority's discretion, is not reasonably necessary to maintain a First-Class Concession Program. The design, installation and construction of the Additional Capital Improvements shall be undertaken by the Operator in accordance with the requirements of ARTICLE IX of this Concession Agreement. Construction of all such Additional Capital Improvements shall be completed by no later than the fifth (5th) anniversary of the Full Turnover Date, and Operator shall provide proof of expenditures for Eligible Costs within 90 days thereof. As further described in **Section 9.4**, should the Operator fail to expend the Additional Minimum Investment, it shall be required to pay the difference between the amount actually expended on Additional Capital Improvements and the Additional Minimum Investment, plus an additional ten percent (10%), to the Authority within thirty (30) days of demand by the Authority.

Section 4.4 Concession Program. Operator shall operate the Concession Program subject to this Concession Agreement and in accordance with the following standards:

1. Operator shall furnish all services provided hereunder on a fair and reasonable basis to all users of the Airport and the public. Operator shall maintain and operate the Concession Locations in a First-Class manner and shall keep the Concession Locations in a safe, clean, orderly and inviting condition at all times, reasonably satisfactory to Authority. Operator shall maintain continuously all licenses and permits necessary for operation of its authorized activities, rights and privileges. The service shall be prompt, clean, courteous, and efficient, and Operator shall take all necessary measures to adequately promote and advertise its facilities required herein.
2. Operator shall at all times retain an active, qualified, competent, and experienced on-site manager to supervise the operations and to represent and act for Operator. Operator shall advise the Authority of the identity of such manager or any replacement therefor. Such manager or supervisor shall be assigned to a duty station or office on the Premises, where such manager shall ordinarily be available during regular business hours. At all times during the manager's absence during regular business hours, a responsible subordinate shall be in charge and available at such station or office.
3. Operator shall be required to uniform or dress its attendants and employees properly and they shall be reasonably clean, courteous, efficient, and neat in appearance at all times. Operator shall not employ any person or persons in or about the Premises who shall use improper language or act in a loud, boisterous, or otherwise improper manner. Operator shall supervise its employees to ensure the maintenance of a high standard of service to the public, the performance of such obligation to be determined at the reasonable discretion of the Authority, and the Authority may object to offensive behavior of Operator's employees and may reasonably require Operator to take all steps reasonably necessary to remove the cause of the objection, including, if necessary, the discharge of the employee based on Operator's disciplinary action procedures.
4. Operator shall develop and implement creative and effective merchandising displays within the Concession Locations to adequately promote and advertise its goods or services that encourage customers to purchase food and beverage and retail items. Merchandising shall include promotional displays and attractive packaging. Operator shall establish reasonably adequate inventory levels as required to facilitate sales. All merchandise shall be properly stocked, stored and secure to maintain control of inventory. Merchandising displays and promotional displays must be aesthetically pleasing. The Authority shall have the right, in its

sole discretion, to require the Operator to immediately remove any displays that do not have the Authority's approval or are inappropriate for the Airport.

5. Operator shall be required to submit a complete product and price list to the Authority for approval at least sixty (60) days prior to each Concession Location's opening, which approval will not be unreasonably withheld, conditioned, or delayed. Such product and price list shall detail all products and services available for sale and the requested price.
6. At all times during the term of this Concession Agreement, Operator shall accept as payment for goods and services cash and at least the following major credit cards: American Express, Mastercard or VISA. Credit cards will be accepted for all purchases above \$1.00.
7. Operator shall arrange for the timely delivery of all goods, merchandise, and stock at such times, in such location(s) and in a manner reasonably satisfactory to Authority. Operator shall use its best, commercially reasonable efforts to complete, or cause to be completed, all deliveries, loading, unloading, and services to the Premises during such times as Authority may reasonably require from time to time. Authority shall not allow delivery trucks or other vehicles servicing the Premises to park or stand unescorted in areas restricted by the Authority. Authority reserves the express right to further regulate the activities of the Operator and its suppliers with the deliveries and servicing of the Premises and Operator agrees to abide by such further regulations of the Authority.
8. Operator shall adhere to, and cause Sublessees, if any, to adhere to, the Authority's Tenant Design Standards, as may be amended from time to time, that describe, among other things, storefront, lighting, and signage standards. The Authority must approve all storefront and other designs for individual Concession Locations prior to construction or implementation.
9. Operator shall manage and coordinate all design and construction associated with the Build-out, maintenance, and/or repair of the Concession Locations, including all Capital Improvements to be constructed, installed, or completed within the Concession Locations, whether initial or future construction and alterations, whether completed by Operator or Sublessees, if any, and including cleaning and maintenance of external design elements installed as directed in the Tenant Design Standards. All designs and construction will meet the Authority's standards and be subject to the Authority's permitting process. Operator shall obtain all other permits required by Governmental Authorities pursuant to Applicable Law. The Authority reserves the right to require the Operator to provide its list of selected architects, interior designers, and construction managers for prior written approval by the Authority.
10. Operator, whether through Local Brands or otherwise, shall seek, to the extent practicable, to include locally made products in Build-out of the Concession Locations. Locally made products should, to the greatest extent reasonable, be offered for sale in every type of retail store and, for food service operations, locally grown or raised meats, produce, baked goods and dairy should be featured. To the extent that it fits within the design of the Concession Locations, such local products should be promoted within the Concession Location.
11. Operator shall provide janitorial and custodial services for the Premises using "green" cleaning means and methods to the extent practicable.
12. Operator shall ensure that adequate grease traps are designed, installed, and checked/cleaned on at least a monthly basis in all food service units. Connections to the main lines shall also be cleaned annually or as frequently as necessary to prevent grease from migrating downstream.

13. Operator shall strive to reduce energy and water consumption throughout the Lease Term.
14. Operator shall ensure onsite separation and sorting of recyclable and compostable materials (including food waste in the future) through construction and operations. Properly labeled sorting bins within Concession Locations will be provided by the Operator.
15. Operator shall cause cardboard recyclables to be delivered to, properly placed into, and properly compacted into Authority-provided compactors.
16. Operator shall specify and install low emitting materials during design, construction, and renovations to protect indoor air quality and public and worker health.
17. Where food and beverage products are served, Operator will implement a program that uses environmentally friendly products which can be recycled, reused, or composted. For example, Styrofoam should not be used unless no other viable alternative is available.
18. Operator will develop and implement a marketing and promotions program, the purpose of which is to enhance the performance of the Concession Locations and customer satisfaction, with an annual expenditure of not less than one half of one percent (0.5%) of Gross Receipts for the prior Lease Year. Authority reserves the right to request documentation demonstrating that Operator has spent at least the amount required herein on marketing efforts. Operator may charge a marketing fee to its authorized Sublessees, if any, provided such fee does not exceed one half of one percent (0.5%) of such Sublessee's Gross Receipts, and such fee is programmed by Operator for marketing purposes.
19. Submit a Daily Gross Sales Report (**Exhibit C-1**) in such electronic format and through such means as the Authority may from time to time require.
20. Submit, along with its payment, by the tenth day of each month, both the Monthly Percentage Rent Report (**Exhibit C-2**) and the Monthly Concession Sales by Unit Report (**Exhibit C-3**).
21. Gather information on no less than a monthly basis and report it not less than once per year (or no more than four (4) times per year, upon request of the Authority) a summary of concession sales by location, separately reporting the following information utilizing the Sales by Product Type form attached hereto as **Exhibit C-4**:
 - i. For Food Service concessions, food items, bottled water, other non-alcoholic beverages (bottled), non-alcoholic beverages (all others), alcoholic beverages, and branded merchandise (if any).
 - ii. For Convenience Retail concessions, reading materials, water, other bottled beverages, packaged food items, sundries, clothing, souvenirs, other merchandise.
 - iii. For Specialty Retail and automated retail concessions, total sales.
22. Attend all meetings called by the Authority that relate to the concession program with at least two (2) business days' notice (or less, in the case of an emergency situation).
23. Furnish to the Authority annually within one hundred twenty (120) days after the end of each Lease Year, an unqualified report certified to by a certified public accountant ("**CPA**"), which firm shall be acceptable to the Authority, reconciling Gross Receipts from Concession Operations during the preceding Lease Year, the total Percentage Rent paid to the Authority,

and the Minimum Annual Guarantee. Any underpayments due the Authority or overpayments due to Operator will be paid within forty-five (45) days of submission.

24. Comply with all Applicable Laws, including those set forth in **Exhibit F** hereof, and all Applicable Laws providing for the fair and non-discriminatory hiring, promotion and treatment of all employees, and monitor and enforce compliance with such Applicable Laws in Concession Operations.
25. Cause Concession Operations within the Concession Locations to be recommenced within 48 hours after the discontinuance of such Concession Operations, regardless of the cause thereof. Operator's failure to cause the re-commencement of Concession Operations within the Concession Locations if discontinued will not result in a reduction of the Rent owed to Authority, and Operator's failure to meet the specified deadlines may result in the assessment of Contract Penalties as provided in **Section 22.1**.
26. Maintain and develop programs to increase the business conducted within the Concession Locations. The Concession Locations shall be operated: (i) in a First-Class Manner on every Business Day of the year (unless otherwise agreed by Authority or prevented by Force Majeure) and during the hours specified in **Section 4.6**; (ii) in accordance with the terms and provisions of this Concession Agreement and Applicable Laws; and (iii) in a manner otherwise consistent with the requirements prescribed by Authority in accordance with Authority's own determination of its operational needs at the Terminal.
27. Not divert any business from the Airport.
28. Monitor consumer sentiment within the Concession Locations through periodic consumer surveys and regularly study new industry trends, bringing recommendations to the Authority for means to improve the Concession Program and customer satisfaction.
29. Cooperate in a timely manner with the Authority in the testing of all safety systems as required by the Authority.
30. Not create, or allow to be created, any hazardous conditions on or about the Concession Locations, the Terminal, or the Airport.
31. Operate, use, and maintain the Concession Locations in accordance with high standards and in such manner as to minimize emissions of all types, noises or noxious odors therefrom.
32. Not permit any music or other audio merchandising or background within the Concession Locations to be audible outside of the Concession Locations; provided, however, that Authority reserves the right to require that all music within the Concession Locations be kept to reasonable levels or be turned off at the request of Authority.
33. Answer all written customer complaints within five days after the receipt thereof and provide to Authority copies of all complaints to Operator and the answers thereto on or before the last day of the calendar month in which such answers were provided.
34. Ensure compliance within the Concession Locations with Authority's signage standards and regulations.
35. Meet all additional requirements of the RFP and Proposal pertaining to the Concessions Program.

Section 4.5 Street Pricing. Operator and its Sublessees, if any, shall observe Street Pricing for goods and services and charge Street Prices, as defined herein, for its goods and services. The following provisions shall apply:

(a) The “*Street Price*” for a good or service shall be the regular price of the good or service charged at an off-Airport, comparable location, plus ten percent (10%), with such regular price and comparable location determined as follows:

- i. If an entity of the same business, franchise, or trade name as a branded Concession Location operates in a non-Airport location within a reasonable geographic radius from the Airport, the Street Price shall be the price of the good or service at the nearest agreed non-Airport location. A reasonable geographic radius shall be 15 miles from the Airport.
- ii. If an entity of the same business, franchise, or trade name as a branded Concession Location does not operate within a reasonable geographic radius, the Street Price shall be the regular price of the good or service at the nearest agreed location of the same business, franchise, or trade name.
- iii. If a good or service is not available from an entity of the same business, franchise, or trade name as stated in subparts (1) and (2), the Street Price shall be within a range of the regular prices of three (3) separate businesses of comparable nature, ambiance, and product and service lines to the Concession Location, as agreed to by Authority, within a reasonable geographic radius as defined in subpart (i).
- iv. If a Concession Location is a franchisee or retail outlet of an entity with a national pricing structure which is identical for all franchisees or outlets, the Street Price shall be the same.

(b) The comparable location described in subparts (a)(i)–(iii) shall be from time to time agreed or amended by the Authority and Operator, approved in writing by the Authority, and set forth in the pertinent Sublease, if any. Requests by Operator for changes to a particular Concession Location’s comparable location or locations shall be made in writing to the Authority for approval, shall become effective only upon Authority’s written approval, and shall only thereupon be made part of the pertinent Sublease, if any, by written amendment.

(c) Where an identical good or service, including food, beverages, and liquor, is not available at the agreed comparable location, any material difference in size or quality may, in the Authority’s discretion, support a price differential.

(d) Introductory, special, temporary, sale or off-price retailers, including without limitation Walmart, Costco, or Sam’s Club, and businesses which are partially or fully protected from competition, such as hotels or sports arenas, shall not be used as comparable locations.

(e) Unless otherwise agreed to by the Authority, where prices are pre-printed on an item by the distributor or manufacture, the price charged for the item shall not exceed the pre-printed price.

(f) As stated elsewhere herein, Operator shall submit to the Authority, within thirty (30) days after the end of each Lease Year, an annual pricing report of its compliance with Street Pricing and that of each Sublessee, if any, and the actions taken by Operator and each Sublessee, if any, to remedy any noncompliance with this **Section 4.5**.

Section 4.6 Hours of Operation. The Airport is open every day of the year, as are its concessions. The Airport is busy during hours before and after traditional shopping hours. In addition, travelers using the Airport have often just traveled from different time zones and are not yet acclimated to the time zone in which the Airport is located. For these reasons, all Concession Locations shall be operated seven days a week, 365 days a year, unless otherwise specified herein or agreed to by the Authority in writing, and in a manner otherwise consistent with the requirements prescribed by the Authority in its sole discretion in accordance with the actual aviation operations at the Airport. While the Authority has provided minimum operating hour requirements, as set forth in this **Section 4.6**, the Operator and its Sublessees, if any, are urged to develop an understanding of passenger flows, and to propose additional hours of operation, if there are opportunities being missed. In no event, however, shall Operator operate the Concession Locations, or permit its Sublessees, if any, to operate for fewer than the required hours. Contract penalties, as provided for in **Section 22.1** may be assessed by the Authority for Operator's or its Sublessees' failure to comply with operating hours standards set forth herein.

Food Service and Convenience Retail Concessions shall be open from one and one-half (1½) hours before the first scheduled departure of the day from the Airport to the time of the last actual (not scheduled) departure of the day from the Airport; provided, however, that Operator and Authority shall determine the appropriate level of service that shall be maintained between the last scheduled departure and the last scheduled arrival. Specialty Retail locations shall open no later than 8:00 a.m. and shall remain open until the time of the last actual (not scheduled) departure of the day from the Airport; provided, however, that Operator and Authority shall determine the appropriate level of service that shall be maintained between the last scheduled departure and the last scheduled arrival.

The hours of operation set forth in this **Section 4.6** are minimum requirements, and any Concession Location may stay open for longer hours, in Operator's discretion. Operator shall consider when the gates nearest each Concession Location are in heaviest use and ensure adequate resources to serve customers in a First-Class manner. The Operator may petition the Authority for reduced hours for individual Concession Locations. To be eligible to receive the Authority's approval, it must be demonstrated, to the sole satisfaction of the Authority, that customer service would not be harmed if the Concession Location were not open, and that the Concession Location has taken affirmative steps to increase business during the time period without success.

In the event of unusual circumstances (delayed flights, weather, etc.), the Authority reserves the right to direct select Concession Locations to remain open beyond the required operating hours. These requirements for operating hours and flexibility shall be included in all Subleases, if any.

While the Authority seeks to ensure exemplary customer service throughout the Concession Program while maintaining overall Concession Location profitability, Operator agrees and acknowledges that certain hours for some units may not be individually "profitable."

During all operating hours, Concession Locations must be fully open for business. For the purposes of this subparagraph, a Concession Location may not start cleaning or closing activities prior to its actual closing time. In addition, a Concession Location may not turn off any of the lights, partially or totally close the doors/grills/security barriers, count cash drawers in public, place chairs on top of tables, offer a reduced menu, or otherwise suggest that the Concession Location is not fully open for business.

Section 4.7 Annual Reporting. Operator shall submit, within ninety (90) days after the end of each full or partial Lease Year (and at one other time during each Lease Year if desired by Operator or if requested by Authority), a report that shall contain the following:

- (a) A review of the performance of Concession Operations for the prior full or partial Lease Year or other applicable period. Said review will include a review of key performance indicators by Concession Location, by month and in total, including, but not limited to sales, sales per square foot, number of transactions, and average transaction value;
- (b) The establishment of new operational goals and objectives for the upcoming Lease Year, including projections for the Concession Locations;
- (c) A discussion of Operator's customer service improvements, initiatives, and activities, including information on surveys, incentives, etc.;
- (d) Any planned expenditures or investments for improvements in the Concession Locations;
- (e) Any changes or improvements in Concession Operations anticipated in the upcoming Lease Year, such as marketing efforts, training, or services;
- (f) Copies of any consumer surveys completed by Operator and other industry trend studies;
- (g) A review of customer service issues, a complaint summary, and how complaints were handled during such prior full or partial Lease Year or other applicable period;
- (h) A listing of any problems encountered during such full or partial Lease Year or other applicable period, as the case may be, and/or improvements to operations to enhance customer service, sales, or other aspects of Concession Operations that might reasonably be completed by Authority working cooperatively with Operator;
- (i) An annual Street Pricing report of the degree of compliance with Street Pricing by Operator and each Sublessee, if any, and the actions taken by Operator and/or Sublessees to remedy any noncompliance; and
- (j) Any other information reasonably requested by Authority.

Section 4.8 Signage Policy. Except with the prior approval of Authority, Operator shall not erect, maintain, or display any signs or any advertising, including moveable signage, in, on or within the Concession Locations, the Terminal or elsewhere on the Airport. All signs and advertising must comply with the Authority's Tenant Design Standards, and no handwritten signs shall be permitted. Authority may require the removal of any signs or advertising in, on, or within the Concession Locations, the Terminal, or elsewhere on the Airport that Authority determines to be unacceptable or improper in its sole discretion. Placement of permanent signage is subject to Authority's permitting process. Upon the expiration or earlier termination of this Concession Agreement, Operator shall remove any and all signs and advertising in, on, or within the Concession Locations or the Terminal or elsewhere at the Airport installed by or on behalf of Operator. Operator shall restore the property affected by such signs or advertising to the same condition as existed prior to the installation of such signs and advertising. In the event of a failure on the part of Operator so to remove each and every such sign or advertising and to restore the property affected thereby as required in this **Section 4.8**, Authority may perform the necessary work and Operator shall pay, upon demand of Authority, the actual and reasonable cost thereof along with an administrative fee to Authority equal to 15% of such cost.

Section 4.9 Rules and Regulations. Authority shall have the right to adopt and enforce Rules and Regulations and operating performance standards with respect to the use of the

Concession Locations, the Terminal, and other Airport facilities by Operator and its Sublessees, if any. Authority may amend or modify such Rules and Regulations and operating performance standards from time to time after prior notice, which is reasonable under the circumstances, to Operator. From time-to-time, Authority may issue directives or advisories that provide information to all Airport tenants regarding issues which affect operations at the Airport. Operator and its Sublessees, if any, are responsible for complying with the Rules and Regulations as they exist from time to time, including the Airport Security Plan.

Section 4.10 Transition. Upon the expiration or earlier termination of this Concession Agreement, Operator shall cooperate fully with Authority and any successor to Operator to ensure an effective and efficient transition of operations within the Concession Locations to Operator's successor. Operator acknowledges its responsibility to help to ensure continued Concession Operations within the Concession Locations in a First-Class manner throughout such transition and shall take no action that would impair the ability of any successor to Operator to obtain, in a timely manner, licenses and permits required to commence and maintain such operations.

Section 4.11 Airport Security. Operator and its employees, agents, representatives, Sublessees, contractors, and subcontractors shall comply with the Airport Security Plan and all other airport security regulations as adopted or required by the TSA or other Governmental Authorities from time to time. If a breach of the Airport Security Plan or such other airport security regulations occurs as a result of the acts or omissions of Operator's employee, agent, representative, sublessee, contractor, or subcontractor in any manner or form at any time, Operator immediately shall remedy such breach or assist the TSA or other Governmental Authorities in remedying such breach, regardless of the circumstances, and Operator will be responsible for any and all associated fines. Operator shall maintain the integrity of the controlled access security system of the Airport at all times during the term of this Concession Agreement. Operator shall be responsible for the screening of goods, products, equipment, materials, and supplies used in connection with its Concession Operations, as well as the goods, products, equipment, materials, and supplies of its authorized contractors, subcontractors, and Sublessees, if any.

Section 4.12 Identification Badges and Security Clearances.

(a) To the extent any of the personnel of Operator or any of its Sublessees, contractors, or subcontractors requires identification badges or security clearances for access at the Airport, Operator is responsible, at its expense, for obtaining such identification badges and security clearances for its employees and those of its Sublessees, if any; provided, however, that Operator may require such sublessees, contractors, or subcontractors to reimburse Operator for the actual costs associated with obtaining such badges and clearances for their respective employees. Each employee of Operator or its Sublessees, contractors, or subcontractors who requires access to the SIDA in the performance of his or her duties must first obtain a Sterile Area Identification Badge or a Secured Area Identification Badge, as the case may be. Prior to the issuance of a Sterile Area Identification Badge or a Secured Area Identification Badge to any individual, the applicant must submit to fingerprinting for the purposes of undergoing a criminal history records check that will determine whether such individual has, within the last 10 years, been convicted of, or found not guilty by reason of insanity with respect to, one of the disqualifying offenses established by the TSA and/or the Authority from time to time. In accordance with 49 C.F.R. Part 1542 and Public Law 106-528, the results of this criminal history records check will be used as a determining factor, along with a TSA Threat Assessment, for granting unescorted SIDA access privileges at the Airport. In addition to the required criminal history records check for access to the SIDA, each individual applying for access thereto must attend a required security training class sponsored by Authority before such identification badge will be issued. If the work to be completed by a particular individual is of limited duration and Operator or any of its Sublessees, contractors, or

subcontractors has an employee with a Sterile Area Identification Badge or Secured Area Identification Badge, as required, available, an individual without the required Badge may be escorted within the SIDA, as long as the individual with the required Sterile Area Identification Badge or Secured Area Identification Badge, as the case may be, remains with such escorted individual at all times and is able to control the escorted individual.

(b) An employee of Operator or its Sublessees, contractors, or subcontractors who must receive a Sterile Area Identification Badge or a Secured Area Identification Badge to perform his duties may not begin work until the required Sterile Area Identification Badge or Secured Area Identification Badge has been issued. A person who possesses a Sterile Area Identification Badge or a Secured Area Identification Badge must display it at all times while on the Airport premises. Such person shall only be authorized to perform work for the entity that sponsored the subject badge and to be the SIDA when performing such work. Operator acknowledges and agrees that misuse of a badge by an employee of Operator or its Sublessees, contractors, or subcontractors will be grounds for the termination of employment of such person.

(c) Authority reserves the right (i) to confiscate or suspend an Authority-issued identification badge of any person allegedly involved in any of the criminal acts enumerated under 49 C.F.R. Part 1542 or for a violation of the Airport Security Plan or other airport security regulations applicable to the Airport, and (ii) to permanently revoke an Authority-issued identification badge of any such person. Authority, the TSA, and other security personnel may challenge any person in the SIDA who is not properly identified by an Authority-issued identification badge, and, if positive identification or association cannot be made, such person may be escorted from the SIDA.

(d) All Authority-issued identification badges and vehicle ramp permits are the property of Authority and, upon the expiration of the Term or earlier termination of this Concession Agreement, the termination of the employment or resignation of any employee of Operator or any of its Sublessees, contractors, or subcontractors, or the discontinuance of the use of the vehicle(s) for the purpose for which vehicle ramp permit(s) were issued, Authority-issued identification badges issued to employees of Operator or any of its Sublessees, contractors, or subcontractors, and all such vehicle ramp permits must be returned to Authority. In addition, the holder of a lost Authority-issued identification badge or vehicle ramp permit is responsible for the replacement cost thereof. The issuance of Authority-issued identification badges and vehicle ramp permits is subject to the completion of such applications and conditions as Authority may require from time to time. All perimeter fence gates (manual and automatic) at the Airport must be secured or manned at all times. Any access gate or door found to be unsecured, or any entry by an unauthorized person(s) and/or vehicle(s), as a result of the failure of Operator or its Sublessees, if any, to comply, or to cause compliance by any of its contractors or subcontractors, with the Rules and Regulations may subject Operator to a TSA-imposed fine of up to \$13,910.00 per occurrence, as such amount may be adjusted, and/or suspension or revocation of the violator's Authority-issued identification badge or vehicle ramp permit. Authority reserves the right to require that vehicles be inspected and approved for operating in the Secured Area by Authority as a part of the application process for a vehicle ramp permit to operate within the Secured Area. In the event Authority determines that any fine or penalty has been imposed upon Authority as a result of the failure of Operator or any of its Sublessees, contractors, or subcontractors, to comply with Applicable Laws, Operator shall pay such fine or penalty or reimburse Authority therefor upon demand by Authority. Operator may recover the amount of any fine imposed by the TSA or the Authority for the failure of any Sublessee, contractor, or subcontractor or its employees, agents, or contractors, to comply with Applicable Laws from such Sublessee, contractor, or subcontractor. Operator shall monitor compliance by its Sublessees, contractors, and subcontractors with the

requirements of this **Section 4.12** and the screening of goods, products, equipment, materials and supplies of such contractors and subcontractors.

Section 4.13 Knowledge of the Airport. Employees of Operator and its Sublessees, if any, are expected to be able to assist Airport users with wayfinding within the Airport. As such, Operator shall cause its employees to have (i) information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks, and other facilities within the Terminal and to provide such information upon request and with courtesy and dispatch, and (ii) a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers' requests for information.

ARTICLE V

FINANCIAL TERMS/RENT

Section 5.1 Percentage Rent; Minimum Annual Guarantee. For the right to develop and operate the Concession Program as described herein and to lease the Premises during the Term, Operator shall pay Rent, commencing on the Effective Date and continuing throughout the Term. Beginning on the Effective Date, Rent shall be equal to twelve percent (12%) of Gross Revenues from the Concession Program.

Section 5.2 Payments to Authority. Not later than ten (10) days after the end of each calendar month during the Term, Operator will remit the Percentage Rent due the Authority for Gross Revenues during the preceding calendar month, together with all reports required under Section 4.4.

All payments to Authority shall be made payable to Lehigh-Northampton Airport Authority or to other such Person or addressee, or by wire transfer or ACH, as designated by Authority pursuant to this Concession Agreement. Contemporaneously with its payment by the tenth (10th) of each month, Operator shall submit such reports as required by the Authority.

Section 5.3 Intentionally Omitted.

Section 5.4 Support and Storage Areas. If applicable, pursuant to Section 3.3, Operator shall pay the Authority Additional Rent, as set forth in the Rates and Charges Resolution, for Operator's use of the Support and Storage Areas monthly, on or before the 10th of the month. Operator understand such rates and charges are established annually by the Authority's Rates and Charges Resolution.

Section 5.5 Utilities; Taxes and Other Charges. Operator will pay for all utilities, including without limitation electrical and water, used by Operator in connection with the Premises at rates established therefore by the Authority or other licensed supplier of such utility; provided, however, that rates for services supplied by the Authority shall not be more than rates which Operator could obtain by a separate contract with the appropriate utility company or those resulting from separate meters for the said Premises.

It is further agreed that the Authority shall have the right, without cost to Operator, to install and maintain in, on or across the Premises, sewer, water, gas, electric and telephone lines, electric substations, street widening or other installations necessary to the operation of the Airport, or to service other grantees of the Authority; provided, however, that the Authority shall carry out such work and locate any above-ground structures in a manner so as not to unreasonably interfere with Operator's use of the Premises.

Authority, without expense to Operator, shall provide any necessary license or easement necessary for telephone service or other utility service to the take-off points upon the Premises. Except as otherwise provided in this agreement, Operator shall contract for its own utilities and shall pay all billings therefore promptly when due.

Authority may, at its election, enter into arrangements with appropriate utility companies or suppliers and thereby supply Operator with water, sewage, electrical, or gas service and resell such service to Operator at rates not exceeding those which Operator would have to pay if it established the same demand and took the same quantity directly from the utility companies or supplier. Authority may, at its election, supply Operator with water and/or sewage service from facilities operated by the Authority and charge Operator for the service at rates established by Authority.

Authority shall not be liable for any interruption or failure in the supply of any such utility services to the Concession Locations, the Support and Storage Areas, or other Terminal areas, and Operator covenants and agrees that Authority shall in no event be liable or responsible to Operator for any loss, damage, or expense that Operator may sustain or incur if either the quality or character of any utility service is changed or is no longer suitable for the requirements of Operator. Operator covenants and agrees that, at all times, the use of electric current by Operator shall never exceed the capacity of existing feeders and wiring to the applicable portion of the Concession Locations and Support and Storage Areas, and that Operator shall make no alterations or additions to the electric equipment and/or appliances serving the Concession Locations or the Support and Storage Areas without the prior consent of Authority in each instance. In addition, Operator shall pay, or cause the payment of, all Taxes and other governmental charges or impositions of any kind imposed against the Premises or any property of Operator prior to the time that the payment of any such Taxes would become delinquent.

Section 5.6 Late Payments. Any payment of Rent due to Authority that is not received by Authority within 10 days after the date due therefor shall bear interest at the maximum rate of interest permitted to be charged by Applicable Laws until such amount is paid in full.

ARTICLE VI
AIRPORT CONCESSION
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Section 6.1 Airport Concession Disadvantaged Business Enterprise (“ACDBE”) Program. It is the Authority’s policy to comply with, promote, and enforce the objectives of U.S. Department of Transportation regulations, 49 CFR Part 23, with respect to the participation of ACDBEs in its concession opportunities.

Section 6.2 ACDBE Participation Goals. In order to provide a fair opportunity for ACDBE participation, the Authority requires that the Operator make good faith efforts, as defined in 49 C.F.R. Section 23.95(i), to provide for a level of ACDBE participation in the Concession Program in each Lease Year during the Term that is equal to or greater than 1.00 percent (1%), in a manner consistent with Operator’s Proposal. All ACDBEs must be certified under a Unified Certification Program acceptable to the Authority and licensed in the State of Pennsylvania. All ACDBEs participating in the Concession Operations must perform a commercially useful function, as defined in 49 CFR Section 23.55. Operator’s compliance with the ACDBE participation goals shall be measured annually in accordance with the terms and conditions set forth in **Exhibit G**.

Section 6.3 Failure to Meet ACDBE Goal. If Operator fails to achieve and maintain the ACDBE participation goal set forth herein, Operator shall submit documentation

demonstrating its good faith efforts to achieve and maintain the specified goal. The documentation shall include, without limitation, correspondence, telephone calls, and other efforts made to locate and obtain the participation of ACDBEs that are ready, willing, and able to participate in the Concession Program. Operator shall also be subject to the provisions of **Section 6.6**.

Section 6.4 Replacement/Substitution of ACDBEs. Operator will be allowed to substitute the originally designated ACDBE(s) only if it demonstrates to the Authority that the originally designated ACDBE(s) is unwilling or unable to perform the functions identified in the Proposal. Operator's ability to negotiate a more advantageous contract with another ACDBE firm will not be considered a valid basis for substitution. If an ACDBE is unwilling or unable to perform the functions identified in the Proposal, the Operator shall inform the Authority in writing and include documentation to justify the substitution, including a statement from the ACDBE to be replaced acknowledging the substitution. Operator will identify a replacement ACDBE or document good faith efforts to replace the ACDBE with another ACDBE. If Operator or a non-ACDBE firm performs the work originally committed to an ACDBE, the Operator shall submit a revised ACDBE plan to the Authority detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal. The Authority shall review all substitutions prior to contract award and during contract performance to ensure that the substitute firms are eligible ACDBEs.

Section 6.5 ACDBE Reporting. Operator shall submit, in the format required by the Authority, a certified monthly report of ACDBE utilization. The Authority reviews the monthly reports to ensure that the ACDBE participation levels remain in compliance with the requirements of this Concession Agreement and to verify that the work committed to ACDBE(s) is actually performed by ACDBE(s). This information will also be used to provide the statistical data for the Authority's ACDBE participation achievement reports to the Federal Aviation Administration.

Authority and its duly authorized representatives shall have the right to audit such monthly reports with or without prior notice, and all such records must be retained by Operator for a period of five (5) years following the expiration or earlier termination of the Term and will be made available for inspection upon request by Authority or other Governmental Authority.

Section 6.6 Compliance Monitoring and Penalty for Non-Compliance. The Authority will bring to the attention of the U.S. Department of Transportation ("**DOT**") any false, fraudulent, or dishonest conduct in connection with the ACDBE Program and this Concession Agreement, so that DOT or FAA can take the appropriate steps to correct the false, fraudulent, or dishonest conduct (*e.g.*, referral to the Department of Justice for criminal prosecution, referral to the DOT or FAA Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). It would be difficult to estimate the actual damages incurred by the Authority where Operator willfully fails to achieve the agreed upon ACDBE participation goals set forth in this Concession Agreement. Accordingly, as liquidated damages, and in addition to other remedies as may be available to the Authority under this Concession Agreement at law or in equity, for each Lease Year that Operator willfully fails to achieve the applicable stated ACDBE participation goals set forth in **Section 6.2** of this Concession Agreement, the Authority may, in its sole discretion, require that Operator pay the Authority an amount equal to the difference between the amount of the agreed upon ACDBE participation goal, expressed as dollars equal to the percentage of Gross Receipts, and the actual ACDBE participation achieved by Operator. In the event Operator can demonstrate and document good faith efforts showing that it failed to achieve the agreed upon ACDBE participation goal notwithstanding good faith efforts, and the Authority concurs with Operator, then Operator shall not be liable to the Authority for liquidated damages arising out of Operator's failure to achieve the agreed upon ACDBE participation goal set forth in this Concession Agreement.

ARTICLE VII
OPERATOR RIGHTS AND LIMITATIONS

Section 7.1 Permitted Uses. Authority grants Operator the following privileges with respect to the Premises and in connection with its Concession Operations:

- (a) The right to use the Premises designated in connection with the conduct of the Concession Program and for no other purpose;
- (b) The non-exclusive right to operate vending machines, in locations approved by the Authority, to sell food and beverages or retail merchandise, as approved by the Authority;
- (c) The right to prepare and sell in-flight meals for consumption aboard commercial and noncommercial aircraft, provided that nothing in this Concession Agreement shall be construed to give exclusive rights, franchise, or privilege with relation thereto, it being further understood that the operators of said aircraft are not restricted by Authority to deal with Operator.
- (d) The right to prepare and sell food and beverages for special on-Airport events, provided that the sponsor of the event has properly secured the right to conduct the event from the Authority.
- (e) The right to use, in common with others authorized to do so, the facilities and improvements owned and constructed by Authority which are of a public nature and available for public use.
- (f) The right of ingress and egress from the Premises for Operator's employees, agents, and customers to the extent reasonably necessary in connection with Operator's operations under this Concession Agreement.
- (g) The right to install, operate, maintain, repair, and store, subject to reasonable approval of Authority in the interest of safety and convenience for all concerned, all equipment and materials necessary for the conduct of Operator's operations within the Premises.
- (h) The right of Operator's employees and authorized Sublessees, if any, who work in the Terminal, to park their automobiles only in the designated Airport employees' parking lot, in accordance with Airport regulations for parking of employee vehicles. The Authority reserves the right to charge Operator's employees for parking privileges.

Section 7.2 Operator Limitations. Operator is limited by the following:

- (a) The Premises is not to be used for any business other than that authorized herein without the written consent of the Authority. Operator and/or its employees may not provide a safe haven for vendors providing aeronautical and/or commercial services at the Airport as defined by the Authority's Minimum Standards, as the same may be amended from time-to-time ("**Minimum Standards**") without said vendor fully meeting the Minimum Standards and obtaining authorization from the Authority to conduct business at the Airport;
- (b) Authority reserves the right to prohibit the sale of items or services that, in the opinion of the Authority, should not be sold or provided by the Operator on or from the Premises. In the event any question or dispute arises as to whether any specific item or service, or category of items or services, may be offered or sold at the Concession Locations, Operator shall submit a description of such services or category of items or services to the Authority and the Authority

shall give a decision in writing and such determination shall be considered as the final resolution of the matter and shall be binding upon Operator and its Sublessees.

(c) Operator shall not overload any floor or paved area in/on the Premises and shall repair any floor, including supporting members, and any paved area damaged by overloading;

(d) Operator shall not do, or permit to be done, anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical, drainage and sewer systems, fire-protection system, and other systems installed or located on or in the Premises;

(e) Operator shall not commit any nuisance or permit its employees, Sublessees, if any, or others on the Premises with its consent to commit, create, or take any action that would tend to create any nuisance on the Premises in the Terminal or elsewhere on the Airport;

(f) Operator shall not cause or permit to be caused or produced upon the Premises, to permeate the same or to emanate there from, any unusual, noxious, or objectionable smokes, liquids, gases, vapor, or odors. Authority acknowledges that some reasonable odors and smoke are associated with the operation of Food Service locations and that the presence of such reasonable odors and smoke shall not constitute a breach of this Concession Agreement or a violation of any rules or regulations of Authority.

ARTICLE VIII

PROHIBITION OF DISCRIMINATION

Section 8.1 Prohibition of Discrimination. This Concession Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R Part 23. Operator agrees that it will not discriminate against any Person because of the Person's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. Operator agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters and cause those Persons to similarly include the statements in their further agreements. Operator shall also comply with the federal contract requirements set forth in **Exhibit F**, attached hereto and incorporated herein.

ARTICLE IX

CONSTRUCTION; CAPITAL IMPROVEMENTS

Section 9.1 Permitting; Planning Requirements. Before Operator may undertake any construction or improvement work within the Terminal, Operator must obtain permits and otherwise comply with the requirements of Authority's Tenant Design Standards, including requirements for the submission and approval of the plans and specifications for all Capital Improvements including, without limitation, the Initial Capital Improvements to the Concession Locations (the "***Plans***"). Operator shall be responsible for the engineering, design, and installation of all Capital Improvements in accordance with all Applicable Laws, including the current codes of Lehigh County and any other Governmental Authority. If requested by Authority, Operator, along with Operator's Architect/Engineer and others as necessary, shall attend weekly meetings with Authority representatives for the purpose of the review of drawings, plans, finishes and specifications pursuant to Authority's Tenant Design Standards.

Section 9.2 Initial Capital Improvements. Operator shall construct, equip, and install the Initial Capital Improvements in accordance with the Plans to be submitted to and approved by Authority, free and clear of all liens, encumbrances, and security interests. The construction, equipping, and installation of the Initial Capital Improvements to each Concession Location shall

be completed within 120 days after the Turnover Date for each Concession Location. Operator shall ensure that construction activities are closed off from public view with a painted gypsum board dust partition with attractive, easily readable signs explaining the construction, as approved by Authority prior to such construction. Authority shall have the right to require that the Initial Capital Improvements be constructed, equipped, and installed in accordance with the Tenant Design Standards. Within 90 days after completion of the Initial Capital Improvements at each

Concession Location, Operator shall submit to Authority accurate electronic files of record drawings which shall be delivered in the following formats:

1. AutoCad *.DWG (Version 2010 or later format); and also
2. Building Information Model format *.BIM (if available) with associated database; and also
3. ASCII points (CSV) file (P, N, E, Z, D) of all “as-built” field run survey shots; and also
4. Adobe PDF, for each Concession Location and the Concession Areas overall.

All electronic CADD and BIM drawings shall be delivered in “model space” format or one (1) complete 2D/3D model. Individual sheet drawing files in “paper” or “sheet” space will not be accepted. Provide ArcGIS (10.2 or later) shapefiles (.shp format) or file geodatabase format, if applicable.

Section 9.3 Acceptance of Concession Locations. Operator’s acceptance of each Concession Location on the applicable Turnover Date shall be conclusive evidence that Operator has accepted the Concession Locations in “AS IS, WHERE IS, AND WITH ALL FAULTS” condition and that the Concession Locations were in good and satisfactory condition for the use intended at the time such possession was taken.

Section 9.4 Certification of Construction Expenditures. Operator shall provide Authority with certified receipts and lien releases for the Initial Capital Improvements and the Additional Capital Improvements required hereunder within 90 days after the completion thereof in detail acceptable to Authority to enable Authority to verify compliance with the requirements of this Concession Agreement. In the event that such certified receipts indicate that Eligible Costs incurred with respect to the Initial Capital Improvements or the Additional Capital Improvements required hereunder are less than the required Minimum Investment or the Additional Minimum Investment, respectively, under the terms and provisions of this Concession Agreement, Operator shall pay to Authority the difference between the required Minimum Investment and/or the Additional Minimum Investment and the Eligible Costs actually incurred by Operator as indicated by such certified receipts, plus an additional ten percent (10%) within thirty (30) days of demand by the Authority. If Authority disputes the amount of Eligible Costs claimed by Operator, Authority may utilize its own audit and accounting staff or, at its option and expense, hire a certified public accountant to audit the Eligible Costs actually incurred by Operator with respect to the Initial Capital Improvements and Additional Minimum Investment. If it is determined that the Eligible Costs actually incurred by Operator with respect to the Initial Capital Improvements or Additional Capital Improvements are less than the Minimum Investment or Additional Minimum Investment required hereunder, then Operator shall pay, in addition to the other amounts due hereunder, the cost of conducting such audit to Authority within 30 days after such determination.

Section 9.5 Improvements/Liens. Operator agrees that any contract for construction, alteration, or repair of Capital Improvements or for the purchase of material to be used, or for work and labor to be performed within the Terminal, including the Concession Locations and the Support and Storage Areas, shall be in writing and shall contain provisions to protect Authority from the claims of any contractors, laborers, subcontractors, or materialmen and otherwise comply with the requirements of the Tenant Design Standards. Operator agrees to give Authority immediate notice of the placing of any lien or encumbrance against the Concession Locations, the Support and Storage Areas, or any other portion of the Airport premises as a result of the acts or omissions of Operator or any of its contractors or subcontractors and further agrees to extinguish such lien in accordance with **Section 14.2**.

Section 9.6 Construction Penalties. All contracts for the construction of Capital Improvements shall require completion of such Capital Improvements according to the Construction Schedule therefor submitted by Operator and accepted by Authority and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages in the event a contractor fails to complete such construction on a timely basis. Operator agrees that it will take all necessary action available under each such construction contract to enforce the timely completion of the work covered thereby. Contract Penalties, payable to Authority for failure to open the Concession Locations as required under this Concession Agreement, are described in **Section 22.1** and **Exhibit E** hereto.

Section 9.7 Surrender. Upon the expiration of the Term or earlier termination of this Concession Agreement, all Capital Improvements shall, at the option of Authority, immediately become the property of Authority, free and clear of any liens or encumbrances whatsoever. Operator shall yield and deliver peaceably to Authority possession of the Concession Locations and the Capital Improvements (to the extent Authority has elected to retain title thereto), broom clean and in a condition at least as good as that which existed on the date the Initial Capital Improvements were completed, except for obsolescence and ordinary wear and tear. Prior to the expiration of the Term or earlier termination of this Concession Agreement, Operator shall have caused the removal of all Capital Improvements for which Authority has elected not to retain title thereto from the Concession Locations, and Operator shall have repaired any damage caused by such removal at its sole cost and expense. In the event that the Concession Locations are not in the condition required by this **Section 9.7** at the expiration of the Term or earlier termination of this Concession Agreement, Authority shall have the right to draw against Operator's Letter of Credit for the funds necessary to restore the Concession Locations and the Capital Improvements surrendered to Authority to such condition. In addition, Authority also shall have the right to draw against Operator's Letter of Credit for the funds necessary to dispose of any Capital Improvements to which Authority does not take title and to restore any damage to the Concession Locations resulting from such disposition, plus an administrative fee equal to 15% of the cost of such disposition and restoration if Operator fails to have caused, prior to the expiration of the Term or earlier termination of this Concession Agreement, such Capital Improvements to be removed from the Concession Locations and the repair of any such damage.

ARTICLE X

MAINTENANCE; RESERVATION OF RIGHTS

Section 10.1 Maintenance and Repair of Capital Improvements and Property of Operator. Operator, at its sole cost and expense, throughout the term of the Lease, maintain all Concessions Locations in an opening day fresh and First-Class condition. Specifically, the Operator shall be responsible for the cleaning, maintenance, repair, and replacement of the Concession Locations, including the Capital Improvements and any other equipment or property of Operator or a Sublessee, if any, located within or upon the Concession Locations and shall keep

the Concession Locations in a clean, neat, orderly, sanitary, and attractive condition. Without limiting the generality of the foregoing, Operator shall be responsible for the following, at its sole cost and expense:

(a) Maintaining the Concession Locations and all fixtures, equipment, and other property of Operator or its Sublessees, if any, in a clean and orderly condition and appearance at all times, including painting areas visible to the general public and, subject to the requirements of ARTICLE IX and this ARTICLE X, making all repairs and replacements and refurbishments of the Capital Improvements, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, which repairs, replacements, and refurbishments shall be in quality and class equal to or better than the original in materials and workmanship, and the prompt payment of the costs and expenses of all such maintenance, repairs, replacements, and refurbishments;

(b) Keeping the Concession Locations at all times free of insects, vermin, rodents, and other pests;

(c) Providing and maintaining within the Concession Locations all fire protection and safety equipment and all other equipment of every kind and nature required by any Applicable Laws, the terms and provisions of this Concession Agreement and any insurance carrier providing insurance covering any portion of the Concession Locations or the Capital Improvements;

(d) Maintaining and repairing all utility service lines, connections, and valves, including service lines for the supply of electric power, water, waste, sewer, telephone, and data transmission conduits and lines, located upon, or exclusively serving the Concession Locations (except to the extent such maintenance or repair relates to Base Building Work installed by or on behalf of Authority); and

(e) Providing, or causing to be provided, at its own expense such janitorial, toilet, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Concession Locations.

Section 10.2 Limitation on Authority's Liability. Operator agrees that all personal property brought into or upon the Concession Locations by Operator, or any of its agents, contractors, subcontractors, employees, invitees, assignees, sublessees, or licensees, shall be at the sole risk of Operator. Authority shall not be liable for theft thereof or for any damage thereto, such theft or damage being the sole responsibility of Operator and/or Sublessees, if any, and Operator/Sublessee hereby agrees to indemnify, defend, and hold the Indemnified Parties harmless from any and all claims arising or resulting directly or indirectly from any such theft or damage.

Section 10.3 Notice of Injury or Damage. Operator shall promptly notify Authority at the Airport Operations Center of any accident or event arising in any manner from Concession Operations or within the Concession Locations that results in or might have resulted in bodily injury, personal injury, property damage or loss of any kind. In addition, Operator shall send a written report of such accident or event to Authority within 24 hours or as soon as possible, but no more than four Days, after such accident or event.

Section 10.4 Reservation of Rights by Authority. Authority and its commissioners, officers, employees, agents, representatives, contractors and subcontractors, and furnishers of utilities and other services, shall have the right from time to time, at their own cost and expense, to do or permit any of the following: (i) to construct and maintain existing and future utility and other systems; (ii) to enter upon the Premises at all reasonable times and upon reasonable notice (provided no notice shall be required during any real or threatened emergency)

to inspect any part thereof, and to make such repairs, replacements, or alterations thereto as may, in the opinion of Authority, be deemed reasonably necessary or advisable; (iii) to have access to all mail facilities according to the rules and regulations of the United States Postal Service; (iv) to approve the weight, size, and location of safes, computers, and other heavy articles in or about the Premises and to require all such items and other office furniture and equipment to be moved in and out of the Terminal only at such times and in such manner as Authority shall direct and in any event at Operator's sole risk and responsibility; (v) to perform any acts related to the safety, protection, or preservation of the Premises; (vi) to do or permit to be done any work in or about the Premises or any adjacent or nearby building, land, street, or alley; (vii) to grant to anyone the exclusive right to conduct any business or render any service in the Terminal that does not operate to exclude Operator from the use of the Concession Locations as expressly permitted by this Concession Agreement; (viii) to adopt, amend, modify, rescind, or suspend any of the Rules and Regulations in effect from time to time and to adopt such additional Rules and Regulations as Authority shall determine to be desirable for the safe, economical, and efficient operation of the Concession Locations, the Support and Storage Areas and the Airport; (ix) to exercise all other rights reserved by Authority pursuant to the provisions of this Concession Agreement; and (x) to construct or install over, in, under or through the Premises new lines, pipes, mains, wires, conduits, and equipment; provided, however, that, in each case in the exercise of any such rights, Authority shall not unreasonably interfere with the occupancy of the Premises by Operator to the extent practicable under the circumstances.

ARTICLE XI **SMOKING REGULATIONS**

Section 11.1 Smoking Regulations. Smoking shall not be permitted in or on the Premises, except in such facilities as are designated for such use and which are equipped with containment systems or other air exchange systems acceptable to the Authority.

ARTICLE XII **BOOKS, RECORDS, RECORDKEEPING AND REPORTS**

Section 12.1 General Requirements. Operator shall maintain, and cause to be maintained, for a period of five years, separate and accurate records with respect to the construction of Capital Improvements in accordance with GAAP. Operator also shall maintain separate and accurate records of all Gross Receipts in a manner that will enable Authority to clearly and accurately ascertain, determine, and audit, if so desired, the amount of Gross Receipts of the Concession Program. In the event records and reports are not maintained in a form that will permit an expeditious audit, Operator may be assessed charges representing costs associated with extraordinary audit time and effort needed to complete an audit. If an audit conducted by the Authority discloses any underpayment by Operator in excess of two percent (2.0%) or more for any twelve (12) month period, Operator shall reimburse the Authority for the full cost of the audit, interest calculated in accordance with this Concession Agreement, any applicable legal fees as explained below, and shall pay a one-time penalty of ten percent (10.0%) of the under reported Percentage Rent. If an audit conducted by the Authority discloses any underpayment by Operator in excess of ten percent (10.0%) or more for any twelve (12) month period, Operator shall reimburse the Authority for the full cost of the audit, interest calculated in accordance with this Concession Agreement, any applicable legal fees as explained below, and shall pay a one-time penalty of fifty percent (50.0%) of the under reported Percentage Rent. If an audit conducted by the Authority discloses any underpayment by Operator in excess of twenty-five percent (25.0%) or more for any twelve (12) month period, Operator shall reimburse the Authority for the full cost of the audit, interest calculated in accordance with this Concession Agreement, any applicable legal fees as explained below, and shall pay a one-time penalty of fifty percent (50.0%) of the

under reported Percentage Rent, and the Authority reserves the right to terminate this Concession Agreement. If the discrepancy is a result of the negligence, intentional act, or fraud of Operator, Operator shall reimburse Authority for all reasonable and actual costs incurred in the conduct of such audit (including reasonable attorneys' fees and litigation expenses).

ARTICLE XIII **TAXES AND ASSESSMENTS; LIENS**

Section 13.1 Payment of Taxes and Assessments. Operator hereby agrees to pay all Taxes and assessments applicable to or resulting from Concession Operations on a timely basis. Authority shall not be responsible for the payment of any Taxes or assessments arising in connection with Concession Operations.

Section 13.2 Liens. Operator agrees not to permit or suffer any liens to be imposed upon the Airport premises or any part thereof as a result of Concession Operations, and, in the event that any such lien is filed, Operator will cause such lien to be discharged of record to the satisfaction of the Authority within 15 days after the filing thereof.

ARTICLE XIV **INSURANCE**

Section 14.1 CGL Coverage.

(a) The Operator shall obtain and maintain continuously in effect at all times during the Term of this Concession Agreement, at its sole cost and expense, commercial general liability insurance coverage (the "**CGL Coverage**"), with coverage limits of not less than Two Million and No/100 Dollars (\$2,000,000) per occurrence and Two Million and No/100 Dollars (\$2,000,000) in aggregate, that insures against claims, damages, losses and liabilities arising from bodily injury, death and/or property damage. The aggregate deductible amount under the insurance policy or policies providing the CGL Coverage shall not exceed One Hundred Thousand and No/100 Dollars (\$100,000) per occurrence. Each insurance policy providing the CGL Coverage shall name the Authority and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Authority may possess or retain. Any insurance coverage maintained by the Authority shall be considered excess insurance only to the Authority's benefit.

(b) Each insurance company issuing an insurance policy providing the CGL Coverage shall be (A) admitted to do business in the Commonwealth of Pennsylvania and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

(c) CGL coverage shall include coverage for food borne illness as part of its products and completed operations coverage. Food Borne Illness coverage of at least One Million and No/100 Dollars (\$1,000,000).

Section 14.2 PC Coverage. Operator shall obtain and maintain, or cause to be obtained and maintained, continuously in effect at all times during the Term of this Concession Agreement, at its sole cost and expense, property insurance coverage (the "**PC Coverage**") with respect to the Capital Improvements for 100% of the insurable replacement value thereof, with no co-insurance penalty, that provides (i) special form property insurance at least as broad as that provided by Form

CP-10-30 (ISO Properties, Inc.), together with builder's risk (with respect to the construction or alteration of or addition to the Concession Locations during the Pre-Occupancy Period or the Term) with any deductible in excess of Ten Thousand and No/100 Dollars (\$10,000.00) to be subject to the prior approval of Authority, and (ii) ordinance and law coverage. Each insurance policy providing the PC Coverage shall name Authority as a co-loss payee and shall provide that such insurance policy shall be considered primary insurance as to any other valid and collectible insurance or self-insured retention Authority may possess or retain. Any insurance coverages maintained by Authority shall be considered excess insurance only to the Authority's benefit. Each insurance company issuing an insurance policy providing the PC Coverage shall be (A) admitted to do business in the Commonwealth of Pennsylvania and rated not less than the Minimum Rating or (B) otherwise approved by the Chief Financial Officer of Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of Authority.

Section 14.3 Auto Coverage.

(a) The Operator shall obtain and maintain continuously in effect at all times during the Term of this Concession Agreement, at its sole cost and expense, automobile liability insurance coverage (the "**Auto Coverage**"), with a coverage limit of not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence, that insures against claims, damages, losses and liabilities arising from automobile related bodily injury, death and/or property damage. The aggregate deductible amount under the insurance policy or policies providing the Auto Coverage shall not exceed Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000) per occurrence. Each insurance policy providing the Auto Coverage shall name the Authority and its commissioners, officers, and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention the Authority may possess or retain. Any insurance coverages maintained by the Authority shall be considered excess insurance only to the Authority's benefit.

(b) Each insurance company issuing an insurance policy providing the Auto Coverage shall be (A) admitted to do business in the Commonwealth of Pennsylvania and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

Section 14.4 WC Coverage.

(a) Operator shall obtain and maintain continuously in effect at all times during the Term of this Concession Agreement at its sole cost and expense, workers' compensation insurance coverage (the "**WC Coverage**") in accordance with statutory requirements and providing employer's liability coverage with limits of not less than \$1,000,000 for bodily injury by accident, \$1,000,000 for bodily injury by disease, and \$1,000,000 policy limit for disease.

(b) Each insurance company issuing an insurance policy providing the WC Coverage shall be (A) admitted to do business in the Commonwealth of Pennsylvania and rated not less than the Minimum Rating (as defined herein) or (B) otherwise approved by the Chief Financial Officer of the Authority. Such approval may be denied or withheld based upon an insurance company's rating by the Rating Service (as defined herein) or other indications of financial inadequacy, as determined in the sole discretion of the Chief Financial Officer of the Authority.

Section 14.5 Liquor Liability Insurance. Liquor Liability Insurance Policy (“*Liquor Insurance*”) of at least One Million and No/100 Dollars (\$1,000,000), issued by a carrier accepted by the Pennsylvania Liquor Control Board (“*PLCB*”) and which Liquor Insurance has been approved by the PLCB and complies with PLCB rules that apply to proof of insurance.

Section 14.6 General Requirements.

(a) For purposes of this Concession Agreement, the CGL Coverage, the PC Coverage, the Auto Coverage, Liquor Insurance and the WC Coverage are collectively referred to as the “*Insurance Coverages*”. Operator agrees that each insurance policy providing any of the Insurance Coverages (A) shall not be altered, modified, cancelled or replaced without thirty (30) days prior written notice from the Operator to the Authority, (B) shall provide for a waiver of subrogation by the issuing insurance company as to claims against the Authority and its commissioners, officers and employees, (C) shall provide that any “other insurance” clause in such insurance policy shall exclude any policies of insurance maintained by the Authority and that such insurance policy shall not be brought into contribution with any insurance maintained by the Authority, and (D) shall have a term of not less than one year.

(b) The Authority shall have the right to change the required terms of Insurance Coverages if such changes are recommended or imposed by the Authority’s insurers, so long as the Authority agrees to reimburse the Operator for any increases in insurance premium costs resulting solely from any such change. The Operator shall provide, prior to the commencement of the Operator’s performance under this Concession Agreement, one or more certificates of insurance which shall indicate that the Operator maintains the Insurance Coverages and that the insurance policy or policies referenced or described in each such certificate of insurance comply with the requirements of this Concession Agreement. Each such certificate of insurance shall provide that the insurance company issuing the insurance policy or policies referenced or described therein shall give to the Authority written notice of the cancellation or non-renewal of each such insurance policy not less than thirty (30) days prior to the effective date of such cancellation or the expiration date of such insurance policy, as applicable. Upon receipt of a written request from the Authority, the Operator also agrees to provide to the Authority duplicate originals of any or all of the insurance policies providing the Insurance Coverages. The certificate(s) of insurance provided by the Operator to evidence the WC Coverage shall specifically certify that the insurance policy or policies which provide the WC Coverage cover the Operator’s activities in the Commonwealth of Pennsylvania.

(c) If the Operator shall at any time fail to obtain or maintain any of the Insurance Coverages, the Authority may take, but shall not be obligated to take, all actions necessary to effect or maintain such Insurance Coverages, and all monies expended by it for that purpose shall be reimbursed to the Authority by the Operator upon demand therefor or, at the Authority’s discretion, by a drawing on the Letter of Credit. If any of the Insurance Coverages cannot be obtained for any reason, the Authority may require the Operator to cease any and all work under this Concession Agreement until all Insurance Coverage are obtained. If any of the Insurance Coverages is not obtained within a period of time to be determined solely by the Authority, the Authority may terminate this Concession Agreement.

(d) The term “*Rating Service*” shall mean A.M. Best Company, or, if A.M. Best Company no longer exists or discontinues its rating of insurance companies, such alternative rating service for insurance companies as determined in the sole discretion of the Chief Financial Officer of the Authority. The term “*Minimum Rating*” shall mean a rating (if A.M. Best Company is the Rating Service) of B+ VIII based upon the criteria for financial strength and financial size ratings

utilized by A.M. Best Company on the date of this Concession Agreement, or such equivalent rating (if A.M. Best Company is not the Rating Service or if A.M. Best Company subsequently revises its criteria for financial strength and financial size ratings) as determined in the sole discretion of the Chief Financial Officer of the Authority, however carrier options with at least a “Minimum Rating” of A- or higher should be considered first.

Section 14.7 No Limitation on Liability. It is expressly understood and agreed that the minimum limits set forth in the Operator Insurance Coverages shall not limit the liability of Operator for its acts or omissions, or those of its employees, agents, contractors, subcontractors, or Sublessees, if any, as provided in this Concession Agreement. By imposing the minimum limits set forth in the Operator’s Insurance Coverages, the Authority makes no representation or warranty that such minimum limits are sufficient to protect Operator’s financial interests, and Operator may exceed these minimum limits in the exercise of its business judgment. If Operator maintains insurance limits greater than those required by the Insurance Coverages, the Authority shall benefit as an additional insured to the full amount of such additional coverage.

ARTICLE XV INDEMNIFICATION

Section 15.1 Negligent Acts or Omissions. Operator agrees to defend, indemnify, and hold each of the Authority, its Board members, officers, employees, agents, contractors and subcontractors (collectively, the “*Indemnified Parties*”) harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys’ fees, court costs, and litigation expenses) claimed or incurred by reason of any bodily injury, death, and/or property damage arising from any negligent act or omission of Operator or any of its officers, contractors, subcontractors, agents, representatives, Sublessees, or employees.

Section 15.2 Intentional Acts. Operator agrees to defend, indemnify, and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys’ fees, court costs, and litigation expenses) claimed or incurred by reason of any bodily injury, death, and/or property damage arising from any intentional act of Operator or any of its officers, contractors, subcontractors, agents, representatives, Sublessees, or employees.

Section 15.3 Placement or Use of Hazardous Materials. Operator agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys’ fees, court costs, and litigation expenses) arising from any negligent act or omission of Operator or any of its officers, contractors, subcontractors, agents, representatives, Sublessees, or employees with respect to any bodily injury, death, and/or property damage with respect to the use or placement of Hazardous Materials on the Airport or other areas.

Section 15.4 Negligent Acts or Omissions as to Hazardous Materials. Operator agrees to defend, indemnify, and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys’ fees, court costs, and litigation expenses) arising from any negligent act or omission of Operator or any of its officers, contractors, subcontractors, agents, representatives, Sublessees, or employees with respect to (i) any investigation, monitoring, clean-up, containment, removal, storage, or restoration work performed by Authority or another Person with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport or any other areas; (ii) any actual, threatened, or alleged

contamination by Hazardous Materials on the Airport premises or other areas; (iii) the disposal, release or threatened release of Hazardous Materials on the Airport or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, Persons or otherwise; (iv) any bodily injury, death, and/or property damage with respect to the use or placement of Hazardous Materials on the Airport premises or other areas; or (v) any violation of any applicable Environmental Laws.

Section 15.5 Intentional Acts as to Hazardous Materials. Operator agrees to defend, indemnify, and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys' fees, court costs and litigation expenses) arising from any intentional act of Operator or any of its officers, contractors, subcontractors, agents, representatives, Sublessees, or employees with respect to (i) any investigation, monitoring, clean-up, containment, removal, storage, or restoration work performed by Authority or another Person with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport or any other areas; (ii) any actual, threatened, or alleged contamination by Hazardous Materials on the Airport or other areas; (iii) the disposal, release, or threatened release of Hazardous Materials on the Airport or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, Persons or otherwise; (iv) any bodily injury, death, and/or property damage with respect to the use or placement of Hazardous Materials on the Airport premises or other areas; or (v) any violation of any applicable Environmental Laws.

Section 15.6 Operation of Aircraft and Vehicles. Operator agrees to defend, indemnify, and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys' fees, court costs and litigation expenses) arising from any use, non-use or condition in, on or about, or possession, alteration, repair, operation, maintenance, or management of, any aircraft, vehicle, mobile equipment, or other property of Operator used or available for use on the Airport.

Section 15.7 Representations and Warranties; Violations of Concession Agreement. Operator agrees to defend, indemnify, and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys' fees, court costs, and litigation expenses) arising from (i) any representation or warranty made herein by Operator or in any other agreement between Authority and Operator being false or misleading in any material respect as of the date such representation or warranty was made, or (ii) any violation of, or failure of Operator to comply with, the terms of this Concession Agreement.

Section 15.8 Liens; Failure to Comply with Applicable Laws. Operator agrees to defend, indemnify, and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities, and expenses (including reasonable attorneys' fees, court costs, and litigation expenses) arising from any lien, encumbrance or claim arising from the actions of Operator or the failure of Operator to comply with any Applicable Laws.

Section 15.9 Survival of ARTICLE XV. It is expressly understood and agreed that Operator's obligations under this ARTICLE XV shall survive the expiration or earlier termination of this Concession Agreement.

ARTICLE XVI
RELATIONSHIP OF AUTHORITY AND CONCESSIONAIRE

Section 16.1 Relationship of Authority and Operator. Authority is not and shall not be considered to be a joint venturer, partner, or agent of Operator, and Operator shall not have the power to bind or obligate Authority except as set forth in any contract executed by Authority. There shall be no liability on the part of Authority to any Person for any debts incurred by Operator or by any business conducted on- or off-Airport in connection with the development or operation of the Concession Operations.

ARTICLE XVII
ASSIGNMENT AND SUBLEASING

Section 17.1 Limited Right to Sublease. Subject to **Section 26.15**, Authority and Operator understand and agree that the Concession Program will be operated by Operator, and Operator may not assign or sublet this Concession Agreement, nor may it transfer the management and operation of the Premise without the prior written consent of Authority. Notwithstanding the foregoing, Operator may request that the Authority permit a sublease to one or more Sublessees for the purpose of enhancing ACDBE participation and/or Local Brands, in which case the Authority's consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that Authority reserves the right to review and approve any administrative, subleasing, or other fees charged by Operator to such Sublessee. In all other cases, the Authority may in its sole discretion refuse to grant consent to assignment or sublease.

For purposes of this Concession Agreement, an assignment or transfer of this Concession Agreement or the Premises includes, without limitation (a) a transfer of a majority in interest of the ownership of Operator excluding however, reorganizations of the management and/or ownership structure of Operator that do not affect the ultimate majority interest or control of Operator, or (b) transfer of the operational control of Operator, even if no ownership interest has been transferred, or (c) any transfer of the Concessional Agreement or the Premises or any part or interest in either, whether by voluntary action of Operator or another party, or by operation of law.

Any assignment, sublease, or transfer of ownership made in violation of the provisions hereof shall be void, and the same shall be deemed to be a default hereunder.

Section 17.2 Attornment. The Operator shall cause each authorized Sublessee, if any, to execute and deliver to the Authority an attornment agreement pursuant to which such Sublessee agrees that if an Event of Default occurs under this Concession Agreement, then, at the request of the Authority, such Sublessee will attorn to the Authority as if its Sublease was directly between the Authority and such Sublessee; provided, however, that the Authority shall not be obligated to exercise such option under such attornment agreement and my, in its sole discretion, elect to exercise such option with respect to any or all or none of the Sublessees, if any.

ARTICLE XVIII
FINANCIAL GUARANTEE

Letter of Credit. As security for Operator's full, faithful and prompt performance of, and compliance with, all covenants, terms and conditions of this Concession Agreement on the part of Operator, Operator hereby agrees to deposit with Authority, at all times from and after a date no later than thirty (30) days from the Effective Date, a stand-by, irrevocable letter of credit (the "**Letter of Credit**") for the benefit of Authority, in the form of **Exhibit D** hereto, in a stated principal amount that is not less than two hundred and fifty thousand dollars (\$250,000) and issued by a national banking association or state chartered bank located in Lehigh County, or

an adjacent county, in Pennsylvania and subject to examination by federal authority of the United States of America, of good standing and having a combined capital and surplus aggregating not less than Five Hundred Million and No/100 Dollars (\$500,000,000.00). Operator shall provide to Authority, not less than 30 days prior to the expiration date of such Letter of Credit, a replacement Letter of Credit which meets the requirements of this **Section 19.1**. A Letter of Credit shall remain on deposit with Authority for not less than 30 days following the expiration of the Term or earlier termination of this Concession Agreement, and, in addition to any and all other remedies available to it hereunder or otherwise, Authority shall have the right, at its sole option and at any time, to draw upon the entire stated amount of such Letter of Credit (including if Operator has failed to provide a replacement Letter of Credit prior to 30 days before the expiration date of the then current Letter of Credit) and to hold and apply any proceeds of such draw in excess of amounts then due to Authority as a cash deposit hereunder. Operator hereby agrees to the deposit of any such excess proceeds with Authority. In the event of the application of any of the proceeds of a Letter of Credit to amounts due to Authority from Operator hereunder, Operator shall, within two days after such application of all or a portion of such proceeds, cause a replacement Letter of Credit that meets the requirements of this **Section 19.1** to be issued for the benefit of Authority in the then-required stated amount of the Letter of Credit upon which Authority has drawn (and, upon receipt of such replacement Letter of Credit, Authority shall refund to Operator the amount of any excess proceeds of the prior Letter of Credit then held by Authority). Authority shall have no obligation to draw upon a Letter of Credit, and neither the existence of such right nor the holding of a Letter of Credit itself shall cure any default or breach on the part of Operator under this Concession Agreement. Within 30 days after the expiration of the Term or earlier termination of this Concession Agreement and upon request therefor by Operator, Authority will return the proceeds of any draw under a Letter of Credit to Operator, less any amounts then due from Operator to Authority under this Concession Agreement. Operator hereby waives any right to any interest which may be earned or accrued on the proceeds of a draw under a Letter of Credit during the Term and agrees that Authority shall have no obligation to hold excess proceeds of a draw under a Letter of Credit in a segregated account. Authority may commingle such proceeds with its other funds.

Section 18.2 Performance Bond. Operator shall deliver to the Authority a performance bond and a labor and material payment bond (“**Bonds**”) to be kept in force throughout the construction of the Initial Capital Improvements and for ninety (90) days thereafter. The Bonds shall be in the amount of the construction cost covering faithful performance of the Operator’s obligations hereunder and the payment of all obligations arising in connection with the construction, free of liens upon the Premises. The bonds shall name the Authority as obligee, and shall be written by surety companies qualified to do business in the Commonwealth of Pennsylvania, under proper certificate of authority, and in such form and with such sureties as the Authority may approve. Operator shall indemnify and hold Authority harmless from any monetary liens placed against the Premises for nonpayment of taxes, materials or labor in connection with construction.

Section 18.3 Net Worth Requirement. Either Operator or an Affiliate of Operator that guarantees Operator’s obligations under this Agreement pursuant to a Performance Guarantee substantially in the form of **Exhibit J** to this Agreement shall, at all times throughout the term of this Agreement, maintain a minimum Net Worth of at least Five Million Five Hundred Thousand and No/100 Dollars (\$5,500,000.00). As used herein, the term “**Net Worth**” shall mean, on any applicable date of determination, (i) the net book value of all assets of Operator or such Affiliate (excluding, however, receivables from Affiliates, patent rights, trademarks, trade names, franchises, copyrights, licenses, goodwill and other intangible assets), after all appropriate deductions in accordance with GAAP (including, without limitation, reserves for doubtful receivables, obsolescence, depreciation and amortization), less (ii) all liabilities of Operator or such Affiliate (including, without limitation, liabilities for taxes and a fair valuation of contingent

or indirect liabilities), all as determined in accordance with GAAP and otherwise in the Authority's reasonable discretion.

ARTICLE XIX
EVENTS OF DEFAULT; REMEDIES

Section 19.1 Events of Default. The occurrence of any of the events described in this **Section 19.1** shall constitute an "*Event of Default*" under this Concession Agreement:

(a) Operator or any Person that owns or controls thirty percent (30%) or more of Operator (a "*Parent*") becomes insolvent, voluntarily dissolves, liquidates, or terminates operations or applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator for Operator or Parent or for all or of a substantial part of its assets, admits in writing its inability, or is generally unable, to pay its debts as the debts become due, makes a general assignment for the benefit of its creditors, commences a voluntary case under the federal Bankruptcy Code, files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, receivership, reorganization, winding-up or composition or adjustment of debts, fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code or any other law relating to bankruptcy, insolvency, receivership, reorganization, winding-up or composition or adjustment of debts, or takes any action for the purpose of effecting any of the foregoing;

(b) By order or decree of a court, Operator or Parent is adjudged bankrupt or an order is made approving a petition filed by any of the creditors or equity owners of Operator or Parent seeking its reorganization or the readjustment of its indebtedness under the federal Bankruptcy Code or under any other law or statute of the United States or of any state thereof;

(c) An involuntary petition or complaint is filed, or other action is initiated, against Operator or Parent seeking bankruptcy relief or reorganization or the appointment of a receiver, custodian, trustee, intervenor, or liquidator for Operator or Parent or for all or substantially all of its assets, and such petition, complaint, or action is not dismissed within 60 days after the filing or initiation thereof; or an order, order for relief, judgment, or decree is entered by any court of competent jurisdiction or other competent Governmental Authority approving or ordering any of the foregoing actions;

(d) By or pursuant to or under authority of any legislative act, resolution, or rule, or any order or decree of any court or Governmental Authority or officer having jurisdiction, a receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of Operator or Parent;

(e) Any materialman, construction, mechanic, or other voluntary lien, judgment, attachment, or encumbrance is filed against any Concession Location or any other portion of the Airport as a result of any act or omission of Operator or Parent or any of their respective contractors or subcontractors and is not removed within 15 days after the filing thereof;

(f) Concession Operations are abandoned, deserted, vacated, or discontinued in 20% or more of the Concession Locations (other than as permitted under this Concession Agreement) for a period greater than 48 hours without the prior consent of Authority;

(g) Operator assigns, transfers, or encumbers this Concession Agreement or any interest herein, without the prior consent of Authority;

- (h) Operator fails duly and punctually to pay any portion of the Rent when due or to make any other payment required hereunder when due to Authority;
- (i) Operator fails to comply with any of the Operator Insurance Coverages;
- (j) Operator fails to provide any monthly, periodic, or annual report required hereunder without demand;
- (k) Operator fails to cause Concession Operations to be maintained in the manner required under this Concession Agreement, as determined in the reasonable discretion of Authority, and such failure continues for a period of three (3) days after notice from Authority to Operator of such failure;
- (l) Operator conducts business activities at the Airport (other than those allowed under this Concession Agreement) that have not been approved in writing by Authority;
- (m) Independent certified public accountants retained by Authority determine that the failure of Operator to maintain a proper internal control structure has resulted in an audit adjustment to the monthly amount of the Rent due to Authority of 2% or more, or Operator has engaged in fraudulent practices regardless of the amount of any audit adjustment;
- (n) The Authority determines there was a material misstatement or omission made by Operator in its Proposal upon which Authority relied in awarding this Concession Agreement;
- (o) Operator is assessed twelve (12) or more Contract Penalties within a rolling twelve (12) month period, in each case, where Operator has been provided with written notice of such Contract Penalty and has not cured such violation within two Days of such notice; provided, however, that notwithstanding the foregoing, if Operator fails to open more than 25% of the Concession Locations (by square footage) within 120 days of their respective Turnover Dates, it shall be an Event of Default under this Agreement;
- (p) Operator fails to maintain the Bonds, the Letter of Credit, or otherwise defaults in the payment or performance of, or breaches, a duty or obligation of Operator under any other agreement with Authority and such default or breach continues after the expiration of any period provided therein for the curing of such default or breach; or
- (q) Operator fails to comply with each and every promise, covenant, condition, and agreement set forth in this Concession Agreement on its part to be kept, performed, or observed (other than the promises, covenants, conditions, and agreements otherwise addressed by specific provisions of this **Section 19.1**), and such noncompliance continues for a period of ten (10) Days after notice from Authority to Operator of such noncompliance; provided, however, that if correction of such noncompliance (i) does not involve the payment of money, (ii) requires activity over a period of time, and (iii) Operator promptly commences to cure such noncompliance to the satisfaction of Authority within such 10-Day period, then such noncompliance shall not constitute an Event of Default hereunder so long as Operator diligently pursues the cure of such noncompliance as determined by Authority; and further provided, failure to reach the ACDBE target level percentages set forth in **Section 6.2** above shall not be considered a default if (1) Operator submits the required documentation demonstrating its good faith efforts to achieve and maintain the specified goal as described in **Section 6.3**, and (2) there is no evidence that Operator engaged in false, fraudulent or dishonest misconduct as detailed in **Section 6.6**.

Section 19.2 Remedies. Upon the occurrence of an Event of Default, Authority may

exercise any and all rights and remedies permitted under law or equity, including without limitation any one or more of the following:

(a) Authority may terminate this Concession Agreement and exclude Operator and any or all Sublessees from the Premises, and Operator shall remain liable for all Rent and other amounts payable by Operator hereunder;

(b) In the event Authority elects to terminate this Concession Agreement as hereinabove provided, Authority also may, in addition to any other remedies it may have, (i) declare all installments of Rent payable under this Concession Agreement for the remainder of the Term to be immediately due and payable, whereupon the net present value of all such installments of Rent (determined by application of a discount rate equal to the then-current yield on U.S. Treasury securities with a maturity approximately equal to the then-remaining Term) shall be immediately due and payable from Operator to Authority, and (ii) recover from Operator all damages Authority may incur by reason of such Event of Default, including the cost of recovering the Premises and attorneys' fees;

(c) Authority, without terminating this Concession Agreement, may re-enter and take possession of the Premises and sublease all or any portion(s) of the Premises for the account of Operator, and Operator shall remain liable for the difference between the Rent and other amounts payable by Operator hereunder and the rent and other amounts actually paid by any such subtenant(s);

(d) Authority, as Operator's agent, without terminating this Concession Agreement, may enter upon and operate the Concession Locations and, in this connection, Operator authorizes Authority upon such entry to take over and assume the management, operation, and maintenance of the Concession Locations for the account of Operator, and Operator shall remain liable for all Rent and other amounts payable by Operator hereunder;

(e) Authority may take whatever action at law or in equity may appear necessary or desirable to collect the Rent and any other amounts then due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement, or covenant of Operator under this Concession Agreement and to recover any or all damages to Authority for Operator's violation or breach of this Concession Agreement, including attorneys' fees, leasing commissions, and all other costs incurred by Authority in re-letting or subleasing the Premises or any part thereof to one or more other tenants;

(f) Authority shall have the right to draw against the Letter of Credit for payment of amounts due to Authority under this Concession Agreement, as well as pursuant to **Section 18.1**;

(g) Authority shall have the right to draw upon the Bonds described in **Section 18.2** on account of any failure to complete the Initial Capital Improvements and/or expend funds in connection with the Minimum Investment required hereunder.

(h) Authority may exercise its rights under Section 19.3; and

(i) No termination of this Concession Agreement prior to the last day of the Term, by lapse of time or otherwise, shall affect Operator's obligation to pay, and Authority's right to collect, the entire Rent and any other amounts due under this Concession Agreement.

The rights and remedies of Authority provided under this **Section 19.2** shall not be exclusive and are in addition to any other rights and remedies that Authority may have at law or in equity or under this Concession Agreement.

Section 19.3 Additional Rights in Bankruptcy. Operator agrees that in the event a bankruptcy petition under any chapter of the federal Bankruptcy Code (11 U.S.C. §101, *et seq.*) is filed by or against Operator or Parent at any time after the execution of this Concession Agreement, Authority shall be entitled to the immediate entry of an order from the appropriate bankruptcy court granting Authority relief from the automatic stay imposed by §362 of the federal Bankruptcy Code (11 U.S.C. §362) to exercise its foreclosure and other rights, including obtaining a judgment and allowing Authority to terminate this Concession Agreement and take possession of and sell all collateral, upon the filing with the appropriate court of a motion for relief from the automatic stay with a copy of this Concession Agreement attached thereto. Operator and Authority specifically agree that (i) upon filing a motion for relief from the automatic stay in any bankruptcy case filed by or against Operator or Parent, Authority shall be entitled to relief from the stay without the necessity of an evidentiary hearing and without the necessity or requirement of Authority to establish or prove the value of any collateral, the lack of adequate protection of its interest in any collateral, or the lack of equity in any collateral; (ii) the lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be “for cause” pursuant to §362(d)(1) of the federal Bankruptcy Code (11 U.S.C. §362(d)(1)); (iii) neither Operator nor its Parent will directly or indirectly oppose or otherwise defend against Authority’s efforts to gain relief from the automatic stay; and (iv) Authority shall be entitled to recover from Operator all of Authority’s costs and expenses (including Authority’s reasonable attorneys’ fees) incurred in connection with any such bankruptcy or insolvency proceeding. This **Section 19.3** is not intended to preclude Operator or Parent from filing for protection under any chapter of the federal Bankruptcy Code. The remedies prescribed in this **Section 19.3** are not exclusive and shall not limit Authority’s rights under this Concession Agreement or under any law.

Section 19.4 No Waiver. No waiver by Authority at any time of any of the terms, conditions, covenants, or agreements herein shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of Authority to take or to exercise any right, power, privilege, or option arising upon any Event of Default, or subsequent acceptance of any Rent, shall impair any such right, power, privilege, or option or be construed to be a waiver of any such Event of Default or a relinquishment thereof or acquiescence therein; and no notice by Authority shall be required to restore or revive any option, right, power, remedy, or privilege after waiver by Authority of an Event of Default in one or more instances.

Section 19.5 Termination by Operator. Operator shall have the right to terminate this Concession Agreement in its entirety upon the occurrence of any of the following:

- (a) The destruction of all or a material portion of the Airport facilities that has a significant impact on the volume of passengers using the Airport; or
- (b) The occupation of the Airport or a substantial part thereof by any Governmental Authority (other than Authority) for a period of 90 consecutive days; provided, however, that, in the event Operator elects to terminate this Concession Agreement under the conditions of this **Section 19.5**, Authority shall have no obligation to reimburse Operator for any moving expenses or the cost of any Capital Improvements.

Section 19.6 Termination for Convenience. The Authority shall have the right to terminate this Concession Agreement in its entirety at any time for any reason, in its sole and absolute discretion, upon sixty (60) days prior written notice to the Operator. In the event of a termination of this Concession Agreement, the Authority shall have the right, in its sole and absolute discretion, to assume any or all of the Subleases, if any. If requested by the Authority,

the Operator shall assign all of its right, title, and interest in and to any Subleases that the Authority has elected to assume, and the Authority shall assume such right, title, and interest in and to such Subleases, as of the effective date of termination of this Concession Agreement by the Authority. The Operator also agrees to execute and deliver such other documents as may be reasonably requested by the Authority to effectuate such assignment. Any Subleases not requested by the Authority to be assumed shall be terminated by the Operator. Upon any such termination for convenience, the Authority shall reimburse the Operator for undepreciated value of the Capital Improvements, if any, based upon the Depreciation Schedule therefor.

ARTICLE XX

DAMAGE OR DESTRUCTION

Section 20.1 Partial Damage. If all or any portion of the Premises are partially damaged by fire, explosion, the elements, act(s) of war or terrorism, or other casualty, but the Concession Locations are not rendered untenable or inaccessible to pedestrians in the Terminal, and such damage is not the fault of Operator or its Sublessees, if any, such damage will be repaired with due diligence by Authority at its own cost and expense and there shall be no abatement of payments to Authority; provided, however, that (i) if the damage is caused by the act or omission of Operator or any of its officers, contractors, subcontractors, Sublessees, agents, representatives or employees, Operator shall be responsible at its expense for making the necessary repairs and restorations as approved by Authority, and (ii) Authority shall have no obligation to repair or restore any damage to the Capital Improvements or any fixtures, equipment, and other property of Operator or its Sublessees, if any. To the extent any permitted mortgagee with an interest in the Airport or any portion thereof permits the release of all or sufficient portion of such insurance proceeds to Operator, Authority shall make insurance proceeds of the PC Coverage paid to Authority available to Operator in a manner reasonably acceptable to Authority for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Operator shall pay the deficiency. If Operator fails to make the necessary repairs and restorations in a timely manner as determined by Authority, then Authority may, at its option, cause such repairs and restorations to be completed and Operator shall reimburse Authority for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to 15% of such costs and expenses.

Section 20.2 Extensive Damage. If all or any portion of the Premises are damaged by fire, explosion, the elements, act(s) of war or terrorism, or other casualty, and such damage shall be so extensive as to render part or all of the Concession Locations untenable or inaccessible to pedestrians in the Terminal, but such damage is capable of being repaired and restored within 120 days, such damage shall be repaired and restored with due diligence by Authority at its own cost and expense and the Rent due for such period shall be reduced in proportion to the portion of the Concession Locations rendered untenable or inaccessible from the time of such damage until such time as the Premises are fully restored and certified by Authority as ready for occupancy; provided, however, that (i) if the damage is caused by the act or omission of Operator or any of its officers, contractors, subcontractors, Sublessees, agents, representatives or employees, there shall be no abatement in the Rent and Operator shall be responsible at its expense for making the necessary repairs and restorations as approved by Authority, and (ii) Authority shall have no obligation to repair or restore any damage to the Capital Improvements or any fixtures, equipment, and other property of Operator or its Sublessees, if any. To the extent any permitted mortgagee with an interest in the Airport premises or any portion thereof permits the release of all or a sufficient portion of such insurance proceeds to Operator, Authority shall make insurance proceeds of the PC Coverage paid to Authority with respect to the Capital Improvements available to Operator in a manner reasonably acceptable to Authority for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient

to pay such costs of repairing or restoring such Capital Improvements, Operator shall pay the deficiency. If Operator fails to make the necessary repairs and restorations in a timely manner as determined by Authority, then Authority may, at its option, cause such repairs and restorations to be completed and Operator shall reimburse Authority for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to 15% of such costs and expenses.

Section 20.3 Complete Destruction. In the event the Premises are completely destroyed by fire, explosion, the elements, act(s) of war or terrorism, or other casualty or are so damaged that they are untenable and cannot be replaced except after more than 120 days, Authority shall be under no obligation to repair and restore the Premises, and the obligation of Operator to pay Rent shall abate as of the date of such damage or destruction until such time as the Premises are fully restored or until Authority provides substitute facilities, reasonably acceptable to Operator, for use by Operator; provided, however, that (i) if the damage is caused by the act or omission of Operator or any of its officers, contractors, subcontractors, Sublessees, agents, representatives or employees, there shall be no abatement in the Rent and Operator shall be responsible at its expense for making the necessary repairs and restorations as approved by Authority, and (ii) Authority shall have no obligation to repair or restore any damage to the Capital Improvements or any fixtures, equipment, and other property of Operator or its Sublessees, if any. To the extent any permitted mortgagee with an interest in the Airport premises or any portion thereof permits the release of all or a sufficient portion of such insurance proceeds to Operator, Authority shall make insurance proceeds of the PC Coverage paid to Authority with respect to the Capital Improvements available to Operator in a manner reasonably acceptable to Authority for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Operator shall pay the deficiency. If Operator is not responsible for such repair and restoration of the Premises, and, within 12 months after the time of such damage or destruction, Authority has not completed such repair and restoration of the Premises or supplied substitute facilities reasonably acceptable to Operator, this Concession Agreement shall terminate in its entirety as of the date of such damage or destruction. If Operator is responsible for the repair and restoration of the Premises under this **Section 20.3** and does not complete such repair and restoration of the Premises within 12 months after the time of such damage or destruction in a timely manner as determined by Authority, then Authority may, at its option, cause such repair and restoration to be completed and Operator shall reimburse Authority for the costs and expenses incurred in such repair and restoration, plus an administrative fee equal to 15% of such costs and expenses.

Section 20.4 Rent. Except as described in this **ARTICLE XX**, and notwithstanding any other provisions of this Concession Agreement, there shall be no abatement in the amount of the Rent due hereunder by reason of damage or destruction to the Premises, the Terminal, or the Airport during the Term.

ARTICLE XXI

CONDEMNATION; EMINENT DOMAIN

Section 21.1 Total Taking. In the event a taking of all of the Terminal or all of the Concessions Locations (a "**Total Taking**") occurs during the Term, then this Concession Agreement shall cease and terminate on the date that title vests in the Governmental Authority (other than Authority) pursuant to such Total Taking. All proceeds paid as a result of such Total Taking shall be the sole property of Authority. Operator shall pay all Rent and other charges, fees, and expenses through the date of such termination and shall promptly vacate the Premises prior to the date on which title vests in such Governmental Authority (other than Authority) pursuant to such Total Taking.

Section 21.2 Partial Taking. In the event a taking of a portion of the Terminal or the Concessions Locations that permits the Operator and its Sublessees, if any, to continue to operate a portion of the Concessions Locations (a “*Partial Taking*”) occurs during the Term, then this Concession Agreement shall terminate as to the portion of the Premises so taken but shall continue in full force and effect as to the remainder of the Premises. In the event of a Partial Taking, Authority shall, promptly after Authority’s receipt of the net proceeds paid as a result of such Partial Taking, repair or restore the portion of the Premises not so taken to the extent Authority determines to be necessary for the continued use or occupancy of the Concession Locations by Operator and its applicable Sublessees, if any; provided, however, that Authority shall have no obligation to repair or restore any damage to the Capital Improvements of Operator or its Sublessees, or any fixtures, equipment and other property of Operator or its Sublessees. Operator or its Sublessees, if any, shall repair and restore the Capital Improvements affected by such Partial Taking so that an architectural unit reasonably appropriate for continued Concession Operations is completed. To the extent any permitted mortgagee with an interest in the Airport premises or any portion thereof permits the release of all or a sufficient portion of such net proceeds to Operator, Authority shall make any net proceeds paid as a result of such Partial Taking that are specifically awarded with respect to the Capital Improvements of Operator available to Operator in a manner reasonably acceptable to Authority for such repair and restoration of such Capital Improvements. During the period of repair and restoration, the Rent shall be abated proportionately to the extent and during the time in which a portion of the Concession Locations is rendered untenable. Upon the completion of such repair and restoration, the Minimum Annual Guarantee (but not the Percentage Rent) for the remainder of the Term shall be proportionately adjusted so as to reflect only the loss of any portion of the Concession Locations taken in such Partial Taking.

ARTICLE XXII

CONTRACT PENALTIES

Section 22.1 Contract Penalties. Operator acknowledges its obligation to provide the public and air travelers with the level and quality of service as described herein and its desire to comply with its obligations under this Concession Agreement. Therefore, Authority has set forth a series of specified liquidated damages in **Exhibit E** hereto (the “*Contract Penalties*”) for various violations of this Concession Agreement. The parties hereto agree that the Contract Penalties set forth herein are reasonable, and Operator agrees to pay Authority such Contract Penalties at the rates or in the specified amounts upon the occurrence of the violations indicated upon the demand of Authority. Operator further acknowledges and agrees that the assessment and demand by Authority, and payment by Operator, of any such Contract Penalties do not waive, limit, or otherwise affect any rights or remedies of Authority as may be available under this Concession Agreement including, without limitations, actual damages.

ARTICLE XXIII

ENVIRONMENTAL PROTECTION

Section 23.1 Compliance with Environmental Laws. Operator hereby agrees to comply with the Environmental Laws. Further, any fines or penalties that may be levied against Authority by the U.S. Environmental Protection Agency (“*EPA*”) or any other Governmental Authority arising from or relating to the failure of Operator to comply with any of the Environmental Laws shall be reimbursed to Authority by Operator immediately after notice of the amount of such fines or penalties from Authority. Upon the expiration of the Term or earlier termination of this Concession Agreement, Operator shall, at Operator’s sole expense, remove or permanently clean all Hazardous Materials that Operator or anyone for which Operator is

responsible caused to be situated on, at, in or under any Airport premises. This shall be done in compliance with all Applicable Laws and shall include the performance of any necessary clean-up or remedial action. Operator shall provide Authority with copies of all records related to any Hazardous Materials that are required to be maintained by any Applicable Laws.

ARTICLE XXIV OPERATING STANDARDS

Section 24.1 Operating Standards. Operator shall ensure that all of the operational, safety, and customer service requirements for Concession Operations are consistently met and that patrons of the Airport receive the high quality of service required under this Concession Agreement. Operator will keep and maintain the Concession Locations in a First-Class manner in compliance with all Applicable Laws, including applicable health, fire, and building inspection requirements.

ARTICLE XXV LEASEHOLD MORTGAGES

Section 25.1 Leasehold Mortgages Not Permitted. Operator shall have no right (i) to convey, pledge, or encumber its leasehold interest in and to the Premises or any Capital Improvements, or (ii) to assign this Concession Agreement as collateral security for any indebtedness of any Person.

ARTICLE XXVI GENERAL PROVISIONS

Section 26.1 Attempts or Payments to Influence. Operator certifies to the best of its knowledge and belief that:

(a) No federally or state-appropriated funds have been paid or will be paid by or on behalf of Operator to any Person for influencing or attempting to influence an officer or employee of any agency of the United States government or a member, officer, or employee of the United States Congress, or an employee of a member of the United States Congress, in connection with the awarding of any federal contract, the making of any federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

(b) If Operator has compensated or does compensate any Person for influencing or attempting to influence an officer or employee of any agency of the United States government, a member, officer, or employee of the United States Congress, or any employee of a member of the United States Congress, in connection with any contract, grant, loan, or cooperative agreement, then Operator shall complete and submit to Authority, in accordance with its instructions, Standard Form LLL, "Disclosure of Lobbying Activities"; and

(c) Operator shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including Subleases, subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and make disclosures in accordance with this **Section 26.1**.

Section 26.2 Drug-Free Workplace. Operator agrees to operate a drug-free workplace program that complies with the requirements of the Authority's Alcohol and Controlled Substance Policy, attached as Exhibit K, as it may be amended from time-to-time.

Section 26.3 No Discrimination. Operator hereby agrees as follows:

(a) Operator will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, or creed, and Operator will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, handicap, or creed, including action relating to employment; upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; or selection for training, including apprenticeships;

(b) Operator will post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this **Section 26.3**;

(c) In all solicitations or advertisements for employees placed by or on behalf of Operator, Operator will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, handicap, or creed;

(d) Operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising such labor unions or workers' representatives of the commitments of Operator under this **Section 26.3** and will post copies of the notice in conspicuous places available to employees and applicants for employment;

(e) Operator will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the United States Secretary of Labor;

(f) Operator will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the United States Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders;

(g) Operator agrees to comply with the additional terms and provisions set forth in **Exhibit F** hereto.

Section 26.4 No Exclusive Right. Nothing herein contained shall be deemed to grant to Operator any exclusive right or privilege to operate any aeronautical concessions within the meaning of federal law with respect to the Airport or any activity conducted thereon.

Section 26.5 Subordination to Other Agreements. This Concession Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between Authority and any other Governmental Authority relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the applicable federal law, including without limitation the Airport Improvement Program and any successor program thereto.

Section 26.6 Subordination to Authority Encumbrances. This Concession Agreement and all rights of Operator hereunder shall be subject and subordinate to any deed of trust or mortgage lien or security interest encumbering Authority's interest in the Airport premises or any

portion thereof and to any renewal, extension, modification, or consolidation of such deed of trust or mortgage or security agreement granting such security interest. Operator agrees, at any time, and from time to time, upon not less than 10 days' prior notice by Authority, to execute, acknowledge and deliver to Authority a statement in writing certifying that this Concession Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Rent and other charges have been paid, whether Operator is in default in the performance of any covenant, agreement, provision or condition contained in this Concession Agreement (and, if so, specifying each such default), and whether, to the best knowledge of Operator, Authority is in default in the performance of any covenant, agreement, provision, or condition contained in this Concession Agreement (and, if so, specifying each such default of which Operator may have knowledge). Authority and Operator intend that any such statement delivered pursuant hereto may be relied upon by any prospective mortgagee of Authority and any purchaser or tenant of the Airport premises or any portion thereof and such purchaser's or tenant's mortgagee or prospective mortgagee, and by any prospective assignee and its mortgagee or prospective mortgagee. Operator also agrees to execute and deliver from time to time, upon not less than 10 days' prior notice by Authority, such similar estoppel certificates as a lender to Authority may require with respect to this Concession Agreement. If Operator fails or refuses to furnish such certificate within the time provided, it will be conclusively presumed that this Concession Agreement is in full force and effect in accordance with its terms and Authority is not in default hereunder.

Section 26.7 No Waiver. No waiver of default by either party hereto of any of the terms, covenants, or conditions herein to be performed, kept, and observed by the other party hereto shall be construed as, or shall operate as, a waiver of any subsequent default under any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the other party hereto.

Section 26.8 Notices, Approvals, Consents, etc. All notices, approvals, consents, demands, requests, and other communications required or permitted by this Concession Agreement must be in writing to be effective and personally delivered or sent by certified United States Mail, postage prepaid, or by a recognized delivery service that provides registered and verifiable shipment or air bill tracking and delivery record, with costs prepaid, to the addresses set forth below:

To Authority: Properties Department
Lehigh-Northampton Airport Authority
Lehigh Valley International Airport
3311 Airport Road, Main Terminal, 3rd Floor
Allentown, PA 18109

With a copy to: Properties@flyabe.com and mmcconnell@flyabe.com

To Operator: _____

Attn: _____

The person and place to which notices, approvals, consents, demands, requests, and other

communications are to be sent may be changed by a party hereto upon written notice to the other. A notice, approval, consent, demand, request, or other communication required or permitted hereunder shall be deemed received and effective (i) on the date it is received by the recipient if sent by personal delivery; (ii) on the date that is three days after the date on which it is deposited in the United States Mail if sent by certified mail; (iii) on the date on which the signature receipt is recorded by the recognized delivery service if it is sent by a recognized delivery service; or (iv) the date service or receipt is refused by the addressee.

Section 26.9 Consents, Approvals, etc., of Authority. Whenever any provision of this Concession Agreement requires the consent or approval of Authority or provides to Authority the right to make a determination or judgment, Authority shall have the absolute and unconditional right to withhold its consent or approval, in its sole discretion, and to make such determination or judgment in its sole discretion on the basis of such factors and considerations as it shall deem relevant (including self-interest), except for those circumstances, if any, where this Concession Agreement expressly provides that such consent or approval will not be unreasonably withheld or Authority will make such determination or judgment reasonably.

Section 26.10 Headings. The headings of the several articles and sections of this Concession 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 Concession Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 26.11 Severability. If one or more clauses, sections, or provisions of this Concession Agreement shall be held to be unlawful, invalid, or unenforceable, the parties hereto agree that the material rights of the parties hereto shall not be affected thereby except to the extent of such holding, and this Concession Agreement shall be construed in all respects as if such invalid or unenforceable clause, section or provision were omitted herefrom.

Section 26.12 Agents for Service of Process. The parties hereto hereby designate the following as their agents for service of process and will waive any objection to service of process if served upon its agent as set forth below:

To Authority:

Elizabeth H. Marcon, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
91 Larry Holmes Dr., Ste. 200
Easton, PA 18042

To Operator:

Section 26.13 Waiver of Anticipated Profits. Operator hereby waives any claim against Authority and its Board members, officers, employees, agents, representatives, contractors, subcontractors, affiliates, consultants, successors, and assigns for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Concession Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Concession Agreement null, void or voidable, or by delaying the exercise of any rights under this Concession Agreement.

Further, Operator affirmatively states that the Authority and its Board members, officers,

employees, agents, representatives, contractors, subcontractors, affiliates, consultants, successors, and assigns have made no promises or commitments regarding the profits that may or may not result from this Concession Agreement. Operator has made its own investigations into the advisability of entering into this Concession Agreement. Operator understands that conditions may change within an Airport, and the Authority shall not be held liable for anticipatory or unrealized profits.

Section 26.14 Right of Authority to Develop Airport. Operator further covenants and agrees that Authority reserves the right to further develop or improve the Airport as Authority may see fit, regardless of the desires or views of Operator and without interference or hindrance.

Section 26.15 Assignment. The Operator may assign this Concession Agreement to a wholly owned Affiliate of Operator within thirty (30) days of the Effective Date if Operator provides a performance guarantee to the Authority substantially in the form of **Exhibit J** hereto. Any subsequent assignment of this Concession Agreement (and any assignment more than 30 days after the Effective Date) shall be subject to the prior written approval of the Authority, which may be granted or withheld in the Authority's sole and absolute discretion.

Section 26.16 Limitation of Authority's Liability. Neither Authority nor any Board member, employee, officer, or agent thereof shall have (i) any personal liability with respect to any of the provisions of this Concession Agreement, or (ii) any liability for any consequential damages resulting from a default by Authority hereunder or from the exercise by Authority of any of its remedies hereunder upon the occurrence of an Event of Default. Operator further agrees not to initiate or participate in any involuntary bankruptcy, reorganization, receivership, or insolvency proceeding against Authority.

Section 26.17 Successors and Assigns. This Concession Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

Section 26.18 Required Modifications. In the event that a Governmental Authority requires amendments, modifications, revisions, supplements, or deletions of any of the terms of this Concession Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Operator shall make or agree to such amendments, modifications, revisions, supplements, or deletions as may be reasonably required, and any expenses resulting from such amendments, modifications, revisions, supplements, or deletions shall be paid by Authority.

Section 26.19 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Concession Agreement.

Section 26.20 Understanding of Agreement. The parties hereto acknowledge that they thoroughly read this Concession Agreement, including any exhibits or attachments hereto, and have sought and received such competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein.

Section 26.21 Legal Interest and Other Charges. Any payment of Rent or any other amount due and payable hereunder that is not paid on the date it is due shall bear interest until paid at the maximum lawful rate of interest permitted by Applicable Laws. Notwithstanding any provision of this Concession Agreement to the contrary, it is the intent of Authority and Operator that Authority shall not be entitled to receive, collect, reserve, or apply, as interest, any amount in excess of the maximum amount of interest permitted to be charged by Applicable Laws. In the event this Concession Agreement requires a payment of interest that exceeds the maximum amount

of interest permitted under Applicable Laws, such interest shall not be received, collected, charged, or reserved until such time as that interest, together with all other interest then payable, falls within the maximum amount of interest permitted to be charged under Applicable Laws. In the event Authority receives any such interest in excess of the maximum amount of interest permitted to be charged under Applicable Laws, the amount that would be excessive interest shall be deemed a partial prepayment of Rent and treated under this Concession Agreement as such, or, if this Concession Agreement has been terminated, any remaining excess funds shall immediately be paid to Operator.

Section 26.22 Holding Over. Any holding over by Operator after the expiration of the Term or earlier termination of this Concession Agreement, without the consent of Authority, shall not be deemed to operate as an extension or renewal of this Concession Agreement, but shall only create a tenancy from month-to-month on the same terms and conditions set forth in this Concession Agreement, which may be terminated by Authority at any time.

Section 26.23 Governing Law. This Concession Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Section 26.24 Avigation Easement. Authority hereby reserves from the Premises, for the use and benefit of itself and its successors and assigns, and the operators, owners and users of Aircraft of all types and for the public in general, a perpetual easement and right-of-way for the free and unobstructed flight and passage of Aircraft ("**Aircraft**" being defined for the purposes of this Concession Agreement as any contrivance now known or hereafter invented, used, or designed for navigation of or flight in or through the air) by whomsoever owned or operated, in and through the airspace above, over and across the surface of the Premises, together with the right to cause in such airspace such noise, vibration, odors, vapors, particulates, smoke, dust, and other effects as may be inherent in the operation of Aircraft for navigation of or flight or passage in and through such airspace, and for the use of such airspace by Aircraft for approaching, landing upon, taking off from, maneuvering about or operating at the Airport. This easement is reserved upon and subject to the following terms and conditions:

(a) Operator shall not hereafter use, cause or permit to be used, or suffer use of, the Premises so as: (i) to cause electrical, electronic, or other interference with radio, radar, microwave, or other similar means of communications between the Airport and any Aircraft; (ii) to adversely affect or impair the ability of operators of Aircraft to distinguish between regularly installed air navigation lights and visual aids and other lights serving the Airport; or (iii) to cause glare in the eyes of operators of Aircraft approaching or departing the Airport, or to impair visibility in the vicinity of the Airport, or to otherwise endanger the approaching, landing, taking off, maneuvering, or operating of Aircraft on, above or about the Airport; provided, however, that, notwithstanding any contrary provision contained above, Operator shall be permitted to construct and maintain such improvements and to utilize all lighting, finishes, and building materials as shall have been submitted to and approved by Authority; and

(b) Operator, for itself and its assigns, Sublessees and legal representatives (collectively, the "**Releasing Parties**"), hereby expressly releases and forever discharges Authority and its Board members, legal representatives, officers, assigns, associates, employees, agents, and all others acting in concert with Authority, from any and all claims, debts, liabilities, obligations, costs, expenses, actions, or demands, vested or contingent, known or unknown, whether in tort, contract or otherwise, that the Releasing Parties may now own or hold, or have any time heretofore owned or held, or may at any other time own or hold, by reason of noises, vibration, odors, vapors, particulates, smoke, dust, or other effects as may be inherent in the operation of Aircraft and caused or created by the flight or passage of Aircraft in or through the airspace subject to the easement

and right-of-way herein reserved.

Section 26.25 Attorneys' Fees. If any Rent due and payable under this Concession Agreement is collected by or through an attorney, Operator shall pay as Additional Rent all attorneys' fees and costs. Operator also shall pay all attorneys' fees incurred by Authority as a result of any breach or Event of Default by Operator under this Concession Agreement.

DRAFT

SIGNATURE PAGE
TO
LEASE AND CONCESSION AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Concession Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

**THE LEHIGH NORTHAMPTON
AIRPORT AUTHORITY**

ATTEST:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

APPROVED AS TO
FORM AND LEGALITY:

RECOMMENDED:

[SIGNATURES CONTINUED ON NEXT PAGES]

SIGNATURE PAGE
TO
LEASE AND CONCESSION AGREEMENT

OPERATOR

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

Before me, _____, a notary public of the state and county mentioned, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged ___self to be _____ of _____, the within named bargainor, a _____, and that ___he as such _____, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the _____ as _____.

Witness my hand and seal, at office in _____, _____, this _____ day of _____, 202__.

NOTARY PUBLIC

My Commission Expires: _____

[SEAL]

[END OF SIGNATURES]

Attachment 1

Definitions

Unless otherwise specifically provided in the Concession Agreement to which this **Attachment 1** is attached, the following terms shall have the meanings specified below (such definitions to be applicable equally to singular and plural nouns and verbs of any tense).

“Additional Capital Improvements” means those Capital Improvements to be undertaken by the Operator and defined in **Section 4.3** as such Additional Capital Improvements.

“Affiliate” means, with respect to Operator, any individual or business entity that has an ownership interest of twenty percent (20%) or more of Operator or of which Operator has an ownership interest of 20% or more; and, with respect to a Sublessee, any individual or business entity that has an ownership interest of twenty percent (20%) or more of the Sublessee or of which the Sublessee has an ownership interest of 20% or more.

“Airport” means the Lehigh Northampton International Airport in Lehigh County, Pennsylvania.

“Airport Security Plan” means that program applicable to the Airport and approved by TSA under section 1542.101 of 49 CFR Chapter XII , as it currently exists and may be amended from time-to-time.

“Applicable Laws” means all laws, statutes, regulations, ordinances, common law, and judicial interpretations thereof, of any Governmental Authority that are applicable to the Airport, the Premises or any specific situation described in this Concession Agreement, including without limitation, those of the FAA, the TSA and the Authority.

“Authority” means the Lehigh Northampton Airport Authority.

“Back-of-House” means areas and equipment that are necessary for the operation of some or all concessions, but that are not generally accessible by the public. Examples include garbage rooms and tray washing facilities.

“Build-out” means all work by Operator and its Sublessees, if any, to improve or renovate the Concession Locations in preparation for their use in accordance with this Concession Agreement.

“Capital Improvements” means any improvement, including the Initial Capital Improvements and the Additional Capital Improvements, undertaken by Operator or a Sublessee thereof, if any, to the Premises, including improvements, structures and fixtures initially installed by Operator and/or Sublessees in the Build-out of Concession Locations, and any subsequent Refurbishments that are affixed and cannot be removed from the Premises without damage to the Terminal, that is properly capitalized under GAAP. Capital Improvements may include, but are not limited to, finish work on floors, ceilings, demising walls and store facades, storefront signage, the panel box and hook-ups to utilities wires and conduits infrastructure, decorations, shelves, counters, cash wraps, lighting and interior design and construction work necessary in general to

accommodate the operation of the Concession Locations.

“Commencement Date” means the earlier of (a) the Facility Opening Date of the last Concession Location comprising the Concession Areas or (b) six (6) months from the Effective Date.

“Concession Agreement” means this Concession Agreement, awarded as a result of the RFP, between the Authority and Operator leasing the Premises and setting forth the parties’ rights and responsibilities, as it may be amended from time to time as provided in the Concession Agreement.

“Concession Area” means the square footage delineated as locations or potential locations that the Operator will lease, develop, and operate, including the specified portion of the Premises in accordance with the terms and conditions set forth in this Concession Agreement.

“Concession Location” means an individual location within the Concession Area.

“Concession Operations” or **“Concession Program”** means the operation of the Concession Locations in accordance with this Concession Agreement and the Proposal.

“Constant Dollars” means the value of the U.S. dollar to which such phrase refers as adjusted by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the calendar month during which this Agreement is fully executed and delivered; the “Current Index Number” shall be the level of the Index for the same calendar month of the year preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1996=100), or any successor index thereto as provided below. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Operator shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

“Construction Schedule” means the schedule submitted by Operator and consented to by Authority with respect to the timetable for construction or renovation at any area within the Concession Area.

“Contract Penalties” has the meaning set forth in **Section 22.1** of the Concession Agreement.

“Convenience Retail” shall mean the offering for sale of merchandise commonly found in newsstands, including, but not limited to newspapers, candy, gum, snacks, magazines, limited hardback and paperback books, single serving bottled/canned/boxed beverages, and souvenirs. Convenience retail outlets may not offer food prepared on premises, except brewed coffee, tea, and hot chocolate, subject to the approval of Authority on a case-by-case basis. Sale of pre-prepared sandwiches, salads, etc., will also be considered on a case-by-case basis and subject to Authority’s approval.

“Day” means a calendar day of 24 hours measured from midnight to the next midnight.

“Depreciation Schedule” means a schedule reflecting the monthly depreciation of the Eligible Costs for Capital Improvements installed or made by the Operator or a Sublessee, if any, in the Concession Area, which schedule is subject to approval by the Authority and shall reflect depreciation on a straight-line basis of four/fifths (4/5) of the remaining lease term (but in no case, less than three (3) years for Capital Improvements in Convenience Retail and Specialty Retail Concession Locations or five (5) years for Capital Improvements in Food Service Concession Locations). Any schedule submitted by Operator for this purpose shall not be deemed a “Depreciation Schedule” until such schedule is approved in writing by the Authority.

“Eligible Costs” means, with respect to any expenditures made by Operator or its Sublessees, if any, in Capital Improvements, the following: (i) construction costs, (ii) architectural and engineering fees, construction management fees and the cost to obtain the applicable permits, which amounts under this clause shall not exceed eighteen percent (18%) of the contracted construction costs, unless otherwise approved by the Authority in writing, and (iii) Capital Improvements (including any equipment and custom-built “trade fixtures”) which constitute fixtures installed for use in the Concession Area. Notwithstanding the foregoing, the definition of Eligible Costs shall not include: (a) costs for Base Building Work incurred by the Authority, (b) costs in excess of one hundred twenty-five percent (125%) of the estimated costs of Capital Improvements provided by Operator to and approved in writing by the Authority at the time preliminary approval is sought unless otherwise specifically approved by the Authority in writing, (c) any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees or any non-construction-related cost) in connection with said construction, (d) amounts paid to any Affiliate of Operator, or (e) any cost for consumables or store/restaurant small wares, cooking equipment, and other expenses of the like, as determined by the Authority in its own sole judgment.

“Environmental Laws” shall mean Applicable Laws pertaining to the environment and/or Hazardous Materials.

“FAA” means the United States Federal Aviation Administration, and any successor agency, office or department thereof.

“Facility Opening Date” means the date that an individual Concession Location is (or shall be) opened for business to the public. No Concession Location will be allowed to open without obtaining a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO) issued by the appropriate Governmental Authority.

“First-Class” means a manner of operating, designing, and constructing the Concession Program such that the standards for cleanliness and customer service meet those of upscale malls and similar high-quality airport and non-airport retail/Food Service facilities.

“Food Service” means the preparation and sale of food products for immediate consumption or consumption on aircraft, including without limitation bars, food bars (e.g., sushi bars and seafood bars), table service restaurants, counter-service concepts where customers place orders and pay at a counter and food/beverages are generally received soon after that at the

counter, and grab-and-go concepts.

“**GAAP**” means generally accepted accounting principles in the United States of America, as set forth in the opinions and pronouncements of the American Institute of Certified Public Accountants’ Accounting Principles Board and Financial Accounting Standards Board or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination.

“**Governmental Authority**” means any federal, state, county, or local governmental entity with authority over the airport, the Concession Area or any other portion of the Premises, including without limitation the FAA, the TSA, and the Authority.

“**Gross Receipts**” means and includes all monies paid or payable to Operator and to each and every Sublessee thereof, if any, whether in cash, credit or otherwise, for sales made or services rendered at or from the Airport regardless of when or where the order therefor is received, or outside the Airport if the order is received at the Airport, including, without limitation:

- Proceeds from the sale of gift and merchandise certificates (but only when such certificates are treated as a sale from the Premises pursuant to Operator’s or its Sublessee’s record keeping system, as applicable);
- Mail order sales arising out of preliminary contacts made at Airport facilities;
- Catalogue sales (catalogues displayed in the Premises must include a tracking number unique to the Concession Location that allows for an auditable method for tracking such sales);
- Computer/Internet sales for delivery at the Airport or when merchandise to fill such orders is taken from Airport locations;
- Other electronic or telephone orders received or filled at the Airport;
- Deposits not refunded to purchasers;
- Orders taken at the Concession Area (although such orders may be filled elsewhere);
- Display allowances, placement allowances, or other promotional incentives received by Operator or its Sublessees, if any, from vendors, suppliers or manufacturers and other revenues of any other type arising out of or in connection with Concession Operations at the Airport;
- Catering sales;
- Sales through vending machines or other devices;
- All insurance proceeds received due to loss of gross earnings under Operator’s or its Sublessees’ business interruption insurance coverage; and
- Orders taken via a third-party application (“**App**”) where an order is placed and payment is collected via the App and for which products are collected or cooked at a Concession Location and either picked up by a customer or delivered to a customer elsewhere within the Airport. Note: no deduction may be made for the cost of such ordering and delivery services.

For the purposes of this definition, a “**sale**” shall be treated as consummated, and the entire amount of the sales price shall be included in Gross Receipts and deemed received, at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and

not at the time of payment. No deduction shall be allowed for uncollected or uncollectable credit accounts or "bad" checks.

Gross Receipts shall not include:

- Any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise or services but only if separately stated from the sales price and only to the extent paid by Operator or its Sublessees, if any, to any duly constituted governmental/taxing authority;
- The exchange of merchandise between the stores or warehouses owned by or affiliated with Operator or its Sublessees, if any, where such exchanges of goods or merchandise are made solely for the convenient operation of the business of Operator or its Sublessee and not for the purpose of consummating a sale which has theretofore been made at, in, from or upon the Concession Area nor for the purpose of decreasing payments otherwise due the Authority hereunder which otherwise would be made at, in, from or upon the Concession Area;
- 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 the Operator or its Sublessee to which it is returned,
- Sale of fixtures, equipment or other items of property that are not stock in trade and not in the ordinary course of Operator or its Sublessees' business,
- Any receipts of Operator or its Sublessees that arise from their operations under any other contract with the Airport and are subject to a percentage fee or percentage rent under that contract,
- Shipping and delivery charges, if provided at the cost of such shipping or delivery and such services are merely an accommodation to customers.
- 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 discounts received from Operator or its Sublessees' vendors, suppliers or manufacturers,
- Customary discounts given by Operator or its Sublessees on sales of merchandise or services to its own employees, if separately stated, and limited in total amount to not more than one percent (1%) of its Gross Receipts per month,
- Discounts, if separately stated, given by Operator or its Sublessees on sales of merchandise or services to employees of Operator, the Authority, other airline lessees in the Terminal, and other persons employed at the Airport who are in possession of a valid Authority- or airline- issued badge,
- Gratuities for services performed by employees of Operator or its Sublessees that are paid by customers to such employees, except to the extent Operator or its Sublessee may be entitled to receive a portion of such gratuities,
- The sale or transfer in bulk of the inventory of Operator or its Sublessees to a purchaser of all or substantially all of the assets of such Operator or Sublessee in a transaction not in the ordinary course of such Operator or its Sublessees' business,
- Amounts given as discounts to customers redeeming coupons issued either by the specific Operator or its Sublessee or through a catalog prepared by Operator or its Sublessee as part of the marketing effort for the Terminal,

- Except with respect to insurance proceeds received due to loss of gross earnings under Operator or its Sublessees' business interruption insurance coverage as provided above and/or insurance proceeds that may be payable to the Authority under such coverage, receipts from all other insurance proceeds received by Operator or its Sublessee as a result of a loss or casualty.
- Pass-through marketing fees collected from a Sublessee, if any (See Section 4.4.20).

“Hazardous Materials” any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is petroleum or a petroleum distillate, asbestos, polychlorinated biphenyls, (iv) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. or defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq..

“Indemnified Parties” has the meaning set forth in **Section 15.1**.

“Initial Capital Improvements” means the Capital Improvements undertaken by Operator or its Sublessees, if any, to Build-out a Concession Location prior to its Facility Opening Date.

“Lease Term” means the period commencing commences on the Effective Date and ending at 11:59 p.m. local time on December 31st of the tenth (10th) Lease Year following the Full Turnover Date, unless otherwise extended or terminated as provided for herein.

“Lease Year” means each successive 365-day period (366 days for any leap years), beginning on the first January 1st following the Full Turnover Date, during the Term.

“Letter of Credit” has the meaning set forth in **Section 18.1**.

“Local Brand” means a Food Service, Convenience Retail, or Specialty Retail company or Affiliate thereof that is not operated by a National Operator, and which is headquartered within Pennsylvania, has its controlling offices located within Pennsylvania, or had original operations in Pennsylvania and continues to maintain a presence within Pennsylvania. Additionally, a Local Brand may be an operation outside of Pennsylvania, provided Pennsylvania residents retain a significant degree of ownership and control and the operation is themed to represent the state of Pennsylvania or Allentown and the Lehigh Valley region.

“National Operator” means a Person which, as of the Effective Date, operates at least four (4) concession units through any means at more than four (4) airports in the United States and that is not a Local Brand.

“Operator” means _____, duly organized, and qualified to do business in the Commonwealth of Pennsylvania, or any successor thereto or assignee thereof permitted by the Concession Agreement.

“Operator’s Architect/Engineer” means the licensed firm or firms engaged by Operator or its Sublessees, if any, from time to time and approved by the Authority, to design and prepare the plans and specifications for the Capital Improvements to Concession Areas.

“Percentage Rent” means the percentages of Gross Revenue payable to the Authority and calculated in accordance with the provisions of ARTICLE V.

“Person” means any individual, corporation, partnership, limited liability company, association, trust, or Governmental Entity.

“Plans” means the completed set of architectural working plans, drawings and specifications and engineering drawings and specifications prepared by the Operator’s Architect/Engineer of record for the construction of Capital Improvements or Refurbishments.

“Premises” has the meaning set forth in **Section 3.1** hereof.

“Pre-Occupancy Period” means the period between the Effective Date and the Commencement Date.

“Proposal” means the document(s) requested by Authority and submitted by the Operator in accordance with the RFP and incorporated in this Concession Agreement by reference as **Exhibit I**.

“Rates and Charges Resolution” means the annual rates and charges resolution approved by the Authority board which sets airport budget and related airport-wide rates and charges.

“Refurbishments” means the repair, maintenance (e.g., painting), replacement or upgrade of Capital Improvements as required.

“Rent” means the payment for the letting of the Premises throughout the Term of this Concession Agreement, until the expiration or other termination of the Concession Agreement, that the Operator shall pay to the Authority.

“RFP” means the Request for Proposals for Non-Exclusive Food, Beverage and Retail Concessions issued by the Authority on [DATE].

“Rules and Regulations” means those rules and regulations promulgated by the Authority for the orderly use of the Airport, as the same may be amended, modified, or supplemented from time to time.

“Shell Condition” means smooth concrete floors, demising studs and walls, and utility services of typical commercial capacity and size located at a Concession Location or in reasonable proximity thereto.

“Specialty Retail” means retail uses, other than those defined as Convenience Retail. These include, without limitation, bookstores; clothing stores; carry-away packaged food not meant for immediate consumption; souvenir stores (that do not offer other Convenience Retail products); accessory stores; jewelry stores; full-service spas; electronics stores; and music stores.

“Storage and Support Areas” means space within the Airport that has been identified for the Operator’s use for storage of product, materials, cooking, food preparation and office space directly related to and in support of its operations at the Airport.

“Street Pricing” or “Street Price” has the meaning set forth in **Section 4.5** hereof.

“Sublease” means a lease executed by the Operator and approved by the Authority conveying to a third party the same interest in certain Concession Areas that the Operator enjoys for a specified term.

“Sublessee” means any Person having the right to sublease and occupy any portion of the Concession Area under a Sublease with the Operator that has been approved by the Authority.

“Taxes” means all taxes, impositions or other charges levied by a Governmental Authority pursuant to Applicable Law, including without limitation, all property taxes, personal property taxes or excises, sales taxes or other taxes assessed upon the property or operations of the Operator or its Sublessees, if any.

“Tenant Design Standards” means standards, established by the Authority, as amended from time to time, to specify the esthetic qualities required of concessions in the Terminal.

“Terminal” means the interconnected facilities at the Airport existing or under construction as of the date of this Concession Agreement, along with all movement areas, public areas and baggage areas therein and interconnecting the facilities.

“TSA” means the United States Transportation Security Administration, and any successor agency, office, or department thereof.

EXHIBITS

DRAFT

EXHIBIT A

CONCESSION LOCATIONS

(Pending)

DRAFT

EXHIBIT B

SUPPORT AND STORAGE AREAS

(Pending)
[if applicable]

DRAFT

EXHIBIT C-1

DAILY GROSS SALES REPORT

(Pending)

DRAFT

EXHIBIT C-2

MONTHLY RENT REPORT

(Pending)

DRAFT

EXHIBIT C-3

MONTHLY CONCESSION SALES BY UNIT REPORT

(Pending)

DRAFT

EXHIBIT C-4

SALES BY PRODUCT TYPE REPORT

(Pending)

DRAFT

EXHIBIT D

FORM OF LETTER OF CREDIT

**STAND-BY, IRREVOCABLE
LETTER OF CREDIT NO. _____**

STATED AMOUNT: US \$ _____

ISSUANCE DATE: _____

EXPIRY DATE: _____

BENEFICIARY: Lehigh Northampton Airport Authority
[INSERT]

APPLICANT: _____

Ladies and Gentlemen:

_____ (the "*Issuer*") hereby issues in favor of the Lehigh Northampton Airport Authority (the "*Beneficiary*"), this Stand-by Irrevocable Letter of Credit No. _____ (the "*Credit*"), which is available by presentment of one or more drafts of the Beneficiary drawn at sight on the Issuer in the form of **Exhibit D-1** to this Credit, together with the appropriately completed Certificate as required herein, in an aggregate stated amount of _____ and No/100 United States Dollars (\$ _____) (the "*Stated Amount*").

A draft of the Beneficiary upon this Credit shall be accompanied by an appropriately completed Certificate of the Beneficiary in the form of **Exhibit D-2** to this Credit, *provided, however,* that, on and after the date (the "*Extension Deadline Date*") which is fifteen (15) days prior to the Expiry Date set forth above (such date, as it may be amended from time to time, is referred to as the "*Expiry Date*"), the draft of the Beneficiary shall be accompanied by an appropriately completed Certificate of the Beneficiary in the form of **Exhibit D-3** to this Credit (in lieu of a Certificate in the form of **Exhibit D-2** to this Credit). Such draft and Certificate shall be dated the date of presentation, and presentation thereof shall be made at any time during the Issuer's business hours on a Business Day (as defined herein) at _____.

A draft submitted at or before 1:00 p.m., Eastern Time, on a Business Day shall be paid to the Beneficiary (or its designee) on the same Business Day, and a draft submitted after 1:00 p.m., Eastern Time, shall be paid to the Beneficiary (or its designee) on the next succeeding Business Day. The Issuer hereby agrees that a draft drawn under and in compliance with the terms of this Credit will be duly honored by the Issuer as provided herein if presented at such office on or before

the Expiry Date. As used herein, “*Business Day*” means any day other than (i) a day on which banks located in Lehigh County, Pennsylvania are required or authorized by law to remain closed or
(ii) a day on which the New York Stock Exchange is closed.

Except as otherwise expressly stated herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600, as subsequently amended or revised (the “*Uniform Customs*”). This Credit shall be deemed to be made under the laws of the Commonwealth of Pennsylvania, and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

By: _____
Name: _____
Title: _____

DRAFT

EXHIBIT D-1

TO FORM OF LETTER OF CREDIT

FORM OF DRAFT

[Date]

To: _____

The undersigned beneficiary of Stand-by, Irrevocable Letter of Credit No. _____ (the "*Credit*") issued by _____, hereby draws _____ United States Dollars (\$ _____) against the Credit.

**THE LEHIGH NORTHAMPTON
AIRPORT AUTHORITY**

By: _____
Name: _____
Title: _____

EXHIBIT D-2

TO FORM OF LETTER OF CREDIT

CERTIFICATE

[Date]

The undersigned, the Lehigh Northampton Airport Authority (the "***Beneficiary***"), is the beneficiary of Stand-by, Irrevocable Letter of Credit No. _____ (the "***Credit***") issued by _____. The Beneficiary hereby certifies that _____ (the "***Company***") has failed to pay an amount as and when such amount was due under the terms of the Lease and Concession Agreement, dated as of _____, 202__, by and between the Beneficiary and the Company, as it may have been amended or modified from time to time.

**THE LEHIGH NORTHAMPTON
AIRPORT AUTHORITY**

By: _____
Name: _____
Title: _____

EXHIBIT D-3

TO FORM OF LETTER OF CREDIT

CERTIFICATE

[Date]

The undersigned, the Lehigh Northampton Airport Authority (the "***Beneficiary***"), is the beneficiary of Stand-by, Irrevocable Letter of Credit No. ____ (the "***Credit***") issued by _____. The Beneficiary hereby certifies that the Beneficiary has not received an amendment to the Credit in a form acceptable to the Beneficiary that extends the Expiry Date for at least one additional year.

Capitalized terms used and not otherwise defined in this Certificate shall have the meanings assigned to them in the Credit.

**THE LEHIGH NORTHAMPTON AIRPORT
AUTHORITY**

By: _____
Name: _____
Title: _____

EXHIBIT E

CONTRACT PENALTIES

Failure to open a Concession Location within 120 days of the Effective Date	\$0.50 per square foot of the subject Concession Location per day of delay, as indicated in Exhibit A
Failure to provide proof of expenditures for Eligible Costs within 210 days of the Effective Date	\$250.00 per day of delay
Failure to meet ACDBE participation goals	See Section 6.6
Failure to maintain hours of operations	\$500.00 per Concession Location, per day
Commencing closing prior to the last actual departure from Concourse A	\$500.00 per Concession Location, per day
Failure to re-open a Concession Location within 60 days after being closed for mid-term refurbishment	25% of the average day's sale in the last month that the Concession Location was fully open for per day of delay
Deficiencies in product quality, customer service, cleanliness, street pricing, hospitality and employee courtesy, or maintenance.	\$500.00 for the first violation and \$1,000.00 for each additional violation per Concession Location during any 12-month period.
Failure to expend annual marketing expenditure (Section 4.4.20)	Two (2) times the required expenditure for the first failure and eight (8) times the required expenditure for any subsequent failures
Failure to comply with the operating requirements detailed in Sections 4.4.1 - 4.4.8 of this Agreement.	\$500.00 per violation, per day

EXHIBIT F

REQUIRED FEDERAL PROVISIONS

A. Compliance with Nondiscrimination Provisions. During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter collectively referred to as “Operator”) agrees as follows:

1. **Compliance with Regulations:** The Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** The Operator, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Operator will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Operator’s noncompliance with the nondiscrimination provisions of this contract, the Authority will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to withholding payments to the Operator under the Agreement until the Operator complies, and/or cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Operator will include the provisions of paragraphs one through six of this Exhibit F, Section (A) in every subcontract,

including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any contract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, Operator may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program. The Operator for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Operator will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. The Operator for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Operator will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27 (nondiscrimination on the Basis of Disability in Programs or Activities receiving Federal Financial Assistance);
- v. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, *et seq.*) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 (2005)); and
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681, *et seq.*).

E. General Civil Rights Provision. In all its activities within the scope of its airport program, the Operator agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If the Operator transfers its

obligation to another, the transferee is obligated in the same manner as the Operator. The above provision obligates the Operator for the period during which the property is owned, used or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration.

F. Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. Subcontracts. Operator agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which Operator grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.

H. ACDBE. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Operator agrees to include the preceding statements in this Paragraph H in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

EXHIBIT G

DBE PARTICIPATION CALCULATION

How to count DBE Participation:

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a) (2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed

in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d) (5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With

respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Airport Lounge Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph (e) (1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e) (2) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(f) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(g) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals.

(h) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(i) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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EXHIBIT H
REQUEST FOR PROPOSALS

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EXHIBIT I
OPERATOR'S RESPONSE TO RFP

Attached hereto and incorporated herein by reference.

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EXHIBIT J

GUARANTY OF PERFORMANCE

GUARANTY OF PERFORMANCE ("Guaranty"), dated this __ day of _____, 2021 executed and delivered by the undersigned _____ ("Guarantor"), in favor of the Lehigh Northampton Airport Authority ("Authority").

WHEREAS, Authority and _____ (hereinafter, "Operator"), a wholly owned subsidiary of Guarantor, are parties to Authority Contract No. _____, dated as of _____ (the "Contract"); and

WHEREAS, the Contract requires Guarantor to guarantee the performance by Operator of its obligations under the Contract; and

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. Guarantor guarantees full, faithful and satisfactory performance of the Contract in accordance with all of its terms and conditions. If Operator defaults in performance of its obligations under the Contract, Guarantor, shall cause or, if Guarantor fails to cause then, at Authority's option, reimburse Authority for causing such performance to be completed in accordance with the terms and conditions of the Contract and pay Authority all damages, costs, and expenses that Authority is entitled to recover from Operator.

2. This Guaranty shall continue in force until all of Operator's obligations under the Contract arising during or relating to the total term of the Contract have been satisfied or until Operator's liability to Authority under the Contract has been completely discharged, whichever comes first. Guarantor shall not be discharged from liability hereunder as long as any claim by Authority against Operator remains unresolved.

3. Written consent of Guarantor shall be required prior to any amendment of the Contract that would increase Guarantor's obligations hereunder.

4. The rights and obligations of Authority and Guarantor hereunder shall not be suspended, abrogated or affected by the fact that performance of the Contract may also be secured or guaranteed by bond or other security.

5. Guarantor waives notice of acceptance of this Guaranty of Performance.

6. This Guaranty shall be binding upon the legal representatives and assigns of Guarantor.

7. Guarantor shall maintain net worth of not less than \$5,500,000 as provided in Section 18.3 of the Contract as long as this Guaranty is in effect.

8. This Guaranty shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to rules concerning conflicts of laws.

9. Should any one or more provisions of this Guaranty be determined illegal or unenforceable, all other provisions shall, nevertheless, remain effective.

10. This Guaranty embodies the entire agreement between Authority and Guarantor with respect to the guaranty of the Contract. There are no promises, terms, conditions or obligations other than those contained herein and this Guaranty shall supersede all previous communications, representations or agreements, either verbal or written, between Authority and Guarantor.

IN WITNESS WHEREOF, _____ has executed and delivered this Guaranty as of the date first above written.

BY: _____

NAME: _____

TITLE: _____

Exhibit K

Authority's Alcohol and Controlled Substances Policy

In development.

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