

**SUCCESSIVE MASTER CONCESSION AGREEMENT**

**by and between**

**COMMONWEALTH PORTS AUTHORITY**

**and**

**DFS SAIPAN LIMITED**

**August 8, 1997**

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## SUCCESSIVE MASTER CONCESSION AGREEMENT

THIS SUCCESSIVE MASTER CONCESSION AGREEMENT ("Agreement"), is made and entered into this 8<sup>th</sup> day of August, 1997, by and between the COMMONWEALTH PORTS AUTHORITY, a public body corporate organized and existing under and pursuant to the laws of the Commonwealth of the Northern Mariana Islands, hereinafter referred to as "CPA", and DFS SAIPAN LIMITED, a Commonwealth of the Northern Mariana Islands corporation formerly known as Duty Free Shoppers Limited, hereinafter referred to as "DFS".

### WITNESSETH:

WHEREAS, CPA is the owner or operator of all Ports of Entry (this term and certain other defined terms used herein shall have the meanings set forth in Section 1 hereof), and is vested by law with the power and duty to carry on the business of acquiring, establishing, developing, extending, maintaining, operating, and managing the Ports of Entry, with all powers incident thereto, and with exclusive jurisdiction to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate and regulate other Ports of Entry; and

WHEREAS, CPA and DFS are parties to the Existing Master Concession, pursuant to which DFS has been granted the right to operate concessions at the Airport and other Ports of Entry; and

WHEREAS, CPA is renovating and expanding the Airport facilities to accommodate the increasing number of air passengers to the Commonwealth; and

WHEREAS, DFS has agreed to fund certain of the planned improvements upon the Airport facilities and to permit CPA to enter into subconcession agreements with other concessionaires at Ports of Entry in Rota and Tinian in exchange for an opportunity to expand DFS' Existing Facilities at the Airport; and

WHEREAS, CPA has, pursuant to 4 CMC §§ 2205(b) and 2206(c), held a public hearing on the matter and determined that it is in the best interest of the Commonwealth to award to DFS a successive master concession for a period of ten (10) years, which successive master concession will be effective on the Master Concession Expiration Date.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises herein contained, CPA and DFS agree as follows:

1. Definitions. All terms with initial capital letters not otherwise defined herein shall have the meanings given in this Section 1.

Agreement to Enter into Subconcessions shall mean that certain Agreement to Enter into Subconcession Agreements by and between CPA and DFS dated as of May 1, 1996.

Airline Use Agreement shall mean each agreement entered into by CPA with an air carrier for the use of the Airport or any other air Port of Entry.

Airport shall mean the Saipan International Airport.

Business Gross Revenue Tax shall mean a tax imposed by the Commonwealth upon DFS of not more than four percent (4%) of gross sales under this Agreement, payable monthly, as provided in 4 CMC §§ 2202(h) and 2205(a).

Commonwealth shall mean the Commonwealth of the Northern Mariana Islands.

Concession Fees shall mean those fees set forth in Section 5(a) hereof.

Concession License Fee shall mean the fee charged by the Commonwealth for the granting of a master concession (including a successive master concession), in the amount of not more than One Thousand Dollars (\$1,000) per year, as provided in 4 CMC § 2208.

Disadvantaged Business Enterprise shall have the meaning subscribed to it under the rules and regulations promulgated from time to time by the United States Department of Transportation, or any successor.

Duty-Free Merchandise shall mean any Merchandise with respect to which Commonwealth tariffs, duties, excise tax, sales tax, gross revenue tax and/or any other tax, impost, duty, tariff, levy or assessment has been waived (regardless of whether the waiver is implemented by direct forgiveness of the tax, impost, duty, tariff, levy or assessment, refund of tax, impost, duty, tariff, levy or assessment previously paid, or any other means).

Effective Date shall mean 12:01 a.m. on November 14, 2005.

Existing Facilities shall mean the retail and support facilities at the Airport operated by DFS as of the date hereof under the Existing Master Concession consisting of a total of approximately 5,832 square feet, more or less, but



specifically excluding those facilities operated by LSG pursuant to the LSG Subconcession Agreement.

Existing Master Concession shall mean that certain Master Concession Agreement by and between CPA and DFS dated November 13, 1985.

Expanded Facilities shall mean the retail and support facilities at the Airport to be occupied and operated by DFS upon completion of construction thereof in approximately September, 1996, consisting of approximately 12,414 square feet, more or less (net of concourse aisles), as more particularly described in Schedule I annexed hereto, but specifically excluding those facilities operated by LSG pursuant to the LSG Subconcession Agreement.

Expansion Project shall mean CPA's project undertaken as of the date hereof to renovate and expand the Airport including construction of additional gates, expanded retail concession space, an expanded and improved immigration processing area, and expanded and improved departure lounges, seating areas and concourse.

Expiration Date shall mean midnight, November 13, 2015.

Gross Sales shall mean (a) all monies paid to DFS for Merchandise sold at an Operating Facility, or delivered at a Port of Entry, pursuant to the rights granted hereunder, and (b) all monies received by DFS in consequence of the exercise of the rights granted to it under Section 3(e) of this Agreement. It is expressly agreed and understood that Gross Sales do not include:

(a) any sales tax, gross receipts tax or other tax, impost, duty, tariff, levy or assessment imposed on DFS, its property or its customers which results from, or is in any way related to, the operations or business of DFS pursuant to this Agreement.

(b) any gratuities paid by customers to DFS on behalf of its employees;

(c) any cash refunds or charge credits for Merchandise returned by customers;

(d) any refunds or credits to DFS pertaining to Merchandise, supplies or equipment returned by DFS to shippers, suppliers or manufacturers, or any discounts received by DFS therefrom;

(e) discounts to employees, volume purchasers or other special category customers, including, but not limited to, airline employees;

(f) receipts from the sale of any uniform or other attire at cost to employees of DFS where such uniform or attire is required to be worn by employees of DFS;

(g) the value of any Merchandise, supplies or equipment of DFS transferred from any of the Operating Facilities to any other place of business of DFS, its parent or any subsidiary or affiliated company, for a valid business purpose;

(h) amounts received from the sale or trade of furniture, fixtures or equipment used at any of the Operating Facilities;

(i) amounts received from activities that are not in the ordinary course of DFS' business;

(j) any amounts paid to CPA by LSG in respect of the LSG Subconcession or by any other authorized Subconcessionaires; and

(k) cash proceeds or other consideration received by DFS in connection with a bulk sale, assignment or transfer of more than one-half of DFS' inventory or assets (as measured by value) not in the ordinary course of DFS' business to one or more purchasers, including, without limitation, in connection with an assignment, transfer or subletting by DFS of its rights hereunder as permitted under Section 18 hereof.

LSG shall mean LSG Lufthansa Service Saipan, Inc., a Commonwealth of the Northern Mariana Islands corporation.

LSG Subconcession shall mean the food and beverage subconcession operated by LSG at the Airport pursuant to the LSG Subconcession Agreement.

LSG Subconcession Agreement shall mean that certain Sub-Concession Agreement entered into effective as of July 18, 1996 by and among CPA, DFS and LSG.

Master Concession Expiration Date shall mean midnight, November 13, 2005.

Merchandise shall mean any product or item customarily sold in duty-free shops or duty-paid gift shops, or which is of interest to tourists or the traveling public, whether or not customarily sold in such shops, including without limitation, the items identified in Section 3(d)(i).

Micronesia shall mean the Mariana Islands (excluding Guam), the Marshall Islands and the Caroline Islands.

Micronesian Handicrafts shall mean articles which are fashioned or constructed by manual skill, which may be augmented by mechanical skill, consisting of an art or craft traditionally performed in Micronesia by the indigenous population, which skills are performed solely within Micronesia, with no less than 51% of the wholesale value of each article added in Micronesia. No component of any Micronesian Handicraft shall be composed of material from a species of animal endangered in Micronesia.

Micronesian Souvenirs shall mean articles which are fashioned or constructed to serve as mementos of Micronesia, prominently bearing the word "Micronesia", or the name of one of the islands or groups of islands of Micronesia, or a scene or picture identifiable as being a representation of a Micronesian locality, by labor performed solely within Micronesia, with no less than 51% of the wholesale value of each article added in Micronesia. No component of any Micronesian Souvenir shall be composed of material from a species of animal endangered in Micronesia.

Operating Facilities shall mean (i) the Expanded Facilities (including the Warehouse Facilities), (ii) any further expansion of the Expanded Facilities or the Warehouse Facilities, and (iii) any facility at any Port of Entry from which DFS may hereafter operate pursuant to this Agreement.

Percentage Fee shall mean that fee charged DFS by CPA pursuant to Section 5(a).

Person shall mean any individual, company, corporation, association, partnership, joint venture, proprietorship or other enterprise or entity.

Ports of Entry shall mean all sea or air ports in the Commonwealth which are now or hereafter owned or operated by CPA, together with all related lands and facilities. These Ports of Entry include, but are not limited to, the Airport, the Commercial Port of Saipan at Tanapag Harbor, Tinian Harbor, West Tinian International Airport, Rota Harbor and Rota International Airport.

Project shall mean any purchase, acquisition, construction, reconstruction, repair, renovation, improvement or expansion of any air Port of Entry, including any capital improvements to the Airport at any time during the Term hereof.

Subconcession Agreements shall mean the subconcession agreements entered into by CPA and DFS with Subconcessionaires.

Subconcessionaires shall mean (i) Persons selected or designated by CPA and operating subconcessions at the Rota and Tinian air or sea Ports of Entry pursuant to the Agreement to Enter into Subconcessions; (ii) LSG and Persons selected and approved by CPA and LSG and operating food and beverage subconcessions pursuant to the LSG Subconcession Agreement; and (iii) Disadvantaged Business Enterprises operating subconcessions at any Port of Entry as provided herein.

Tax shall mean any tax, impost, duty, tariff, levy or assessment, other than (a) the Northern Mariana Territorial Income Tax, (b) any income tax levied pursuant to the United States Internal Revenue Code, or any other general tax levied upon net income, (c) the Business Gross Revenue Tax or (d) the Concession License Fee.

Term shall mean that period during which this Agreement is in effect as provided in Section 4 hereof.

Unused Credits shall mean, at any time, all credits against Concession Fees available to DFS pursuant to Section 6 hereof that exceed the Concession Fees then due and payable in respect of a Port of Entry.

Warehouse Facilities shall mean the warehouse facilities on the ground floor of the Airport terminal building (together with appurtenances thereto) utilized by DFS as of the date hereof and to be utilized by DFS to support its retail operations in the Expanded Facilities consisting of a total of approximately 17,000 square feet, more or less, as more particularly described in Schedule II. The Warehouse Facilities may be used for the storage of inventory of Merchandise, operational supplies, equipment and as office space.

Warehouse Fee shall mean that fee charged DFS by CPA for the Warehouse Facilities as provided in Section 5(b) hereof.

Warehouse Lease shall mean that certain Indenture of Lease by and between CPA and DFS commencing on January 1, 1988 and ending on December 31, 2006, unless earlier terminated.

2. Expiration of Existing Master Concession; Consideration for Agreement.

(a) Expiration of Existing Master Concession. On the Master Concession Expiration Date, this Agreement shall

automatically take effect and all rights and obligations of DFS and CPA under the Existing Master Concession shall thereafter be determined solely by reference to this Agreement and not to the Existing Master Concession. CPA and DFS expressly agree that this Agreement is an extension of the Existing Master Concession (as amended from time to time) and the effectiveness of this Agreement is intended to continue (rather than terminate) the rights of DFS or any Subconcessionaires conferred pursuant to the Existing Master Concession, the Agreement to Enter into Subconcessions, any Subconcession Agreements or the LSG Subconcession Agreement.

(b) Termination of Warehouse Lease. On the Master Concession Expiration Date and the effectiveness of this Agreement, the Warehouse Lease shall be deemed terminated by this Agreement and the rights and obligations of the parties with respect to the Warehouse Facilities shall be determined solely by reference to this Agreement.

(c) Consideration. As additional consideration for CPA's agreement to enter into this Agreement and thereby extend the Existing Master Concession, DFS has agreed to (i) pay One Million Dollars (\$1,000,000) to CPA concurrently with the execution of this Agreement; and pay the concession fees as provided in Section 5(a) hereof.

3. Rights to All Ports of Entry.

(a) Airport. CPA grants to DFS the right, and DFS assumes the obligation, to operate at the Airport under the terms and subject to the conditions contained herein.

(b) Other Ports of Entry. Subject only to the terms of the Agreement to Enter into Subconcessions, any Subconcession Agreements and the LSG Subconcession, DFS shall have the right, but not the obligation, to operate at any Port of Entry other than the Airport, on the terms and conditions contained herein.

(i) In the event that DFS and CPA mutually determine that it is desirable for DFS to operate at one or more of the Ports of Entry other than the Airport:

(A) CPA shall, at no expense to DFS, build a facility acceptable to DFS at such Port of Entry from which DFS may operate, and CPA shall lease such facility to DFS at no additional charge to DFS; provided, however, that if CPA is unable to build such a facility, DFS shall have the right to construct a facility acceptable to CPA, and credit the agreed cost of such construction against Concession Fees as such costs are incurred; and

(B) DFS shall, upon completion of the facility, make necessary leasehold improvements to such facility and thereafter operate such facility in accordance with this Agreement.

(ii) In the event that CPA determines that it is desirable for DFS to maintain a concession for Duty-Free Merchandise at any Port of Entry other than the Airport and DFS disagrees with such determination, CPA may build a facility at such Port of Entry for such operations, and DFS will provide improvements for such facility of a level sufficient to meet the demand at such Port of Entry for Duty-Free Merchandise at the time CPA determines to build such facility. DFS grants permission for CPA, under such circumstances, to grant to a Disadvantaged Business Enterprise the right to use that facility for the on premises sale of Duty-Free Merchandise at such Port of Entry (but not to use that Port of Entry for the delivery of Merchandise ordered and/or paid for elsewhere), upon terms and subject to conditions no more favorable than those governing this Agreement; provided, however, that DFS shall have the right to terminate such Disadvantaged Business Enterprise's rights upon 90 days' notice and operate such facility in accordance with this Agreement. Fees paid by a Disadvantaged Business Enterprise in connection with operations described in this subparagraph 3(b)(ii) shall be paid in the same manner as the Concession Fees are paid.

(iii) In the event that CPA determines that it is desirable for DFS to maintain a concession for non-Duty-Free Merchandise at any Port of Entry other than the Airport and DFS disagrees with such determination, CPA may build a facility at such Port of Entry for such operations, and DFS grants permission for CPA, under such circumstances, to allow a Disadvantaged Business Enterprise to use that facility for a period not to exceed five (5) years for the on-premises sale of non-Duty-Free Merchandise at such Port of Entry (but not to use that Port of Entry for the delivery of Merchandise ordered and/or paid for elsewhere), upon terms and subject to conditions no more favorable than those governing this Agreement. Fees paid by a Disadvantaged Business Enterprise in connection with operations described in this subparagraph 3(b)(iii) shall be paid in the same manner as the Concession Fees are paid. At the end of the above-mentioned period of no more than five (5) years, DFS shall have the right to lease that facility and commence operations pursuant to the terms and subject to the conditions of this Agreement. If DFS chooses not to exercise such right, CPA may lease the above-mentioned facility to a Disadvantaged Business Enterprise for another period of no more than five (5) years for the same purposes as described above.

(c) Facilities at Airport. CPA hereby agrees to lease to DFS and DFS agrees to lease from CPA the Operating Facilities at the Airport.

(d) Exclusive Rights: Merchandise.

(i) DFS shall have the sole and exclusive right (A) to operate facilities at each and every Port of Entry for the purpose of offering to sell and selling Duty-Free Merchandise and any other item of Merchandise, and (B) Merchandise and any other item of Merchandise, sold in less than a wholesale quantity, to or for the direct or indirect benefit of a departing individual, regardless of the time or place of the individual's departure and regardless of the time or place of the order and/or payment for such Merchandise. Such exclusive rights shall include, but not be limited to, the right to offer to sell, sell and/or deliver Duty-Free and non-Duty-Free: general Merchandise; alcohol and tobacco products; food and beverages (alcoholic and non-alcoholic) intended for on-premises consumption, including but not limited to at a coffee shop and cocktail lounge; perfume; cologne; jewelry; confections; candy; leather and skin products; writing instruments; clothing; fashion accessories; watches; souvenirs; film; photographic accessories; reading materials; beauty aids; toiletries; sunglasses; curios; toys; sporting goods; handicrafts; art work; smokers' accessories; hats; footwear; sundries; travelers' aids; postcards; greeting cards; Local goods and products; Micronesian Souvenirs; Micronesian Handicrafts; and any other Merchandise that is of interest to the public. The rights described above shall also include, without limitation, for each Port of Entry, the right to deliver Merchandise to the purchaser at the departure gate and the right to deliver Merchandise to the purchaser at a point or points and in a manner whereby the Merchandise may not reenter the Commonwealth without customs examination and control. DFS' exclusive rights under this Section 3(d)(i) are subject only to the rights conferred on Subconcessionaires under the LSG Subconcession Agreement, any Subconcession Agreements and the Agreement to Enter into Subconcessions.

(ii) Except for the rights granted to DFS herein, to any Disadvantaged Business Enterprise in accordance with this Agreement, to Subconcessionaires, and to any other Person pursuant to Section 3(j) hereof, CPA shall confer no right upon, nor suffer nor allow, any Person to use any Port of Entry to offer to sell or sell Duty-Free Merchandise or any other type of Merchandise, or to deliver Duty-Free Merchandise or any other type of Merchandise, sold in less than a wholesale quantity, to or for the direct or indirect benefit of a departing individual, regardless of the time or place of the individual's departure and regardless of the time or place of the order and/or payment for the Merchandise.

(iii) Nothing herein shall prevent the delivery of an item of property at a Port of Entry to a departing passenger as a result of a casual, non-commercial transaction between such passenger and an individual whose business or employment does not include the sale or delivery of such property.

(e) Vending Machines. Subject to the rights of Subconcessionaires under any Subconcession Agreements or the Agreement to Enter into Subconcessions, DFS shall have the exclusive right at each Port of Entry to install and operate vending machines dispensing food, confections, tobacco products, non-alcoholic beverages and/or other products to the general public in locations approved by CPA.

(f) In-flight Catering. DFS may offer, on a non-exclusive basis, in-flight catering to the airlines utilizing the Airport or any other air Port of Entry. If DFS desires to conduct such operations, CPA shall lease to DFS additional facilities at the Airport or other air Port of Entry wherein DFS may conduct such in-flight catering or similar service, under such terms and at such rental rates and conditions as are then generally applicable at the Airport or other air Port of Entry for such use. Revenues received by DFS from in-flight catering or similar service shall not constitute Gross Sales, nor shall fees paid to CPA with regard to such in-flight catering or similar service be credited against Concession Fees.

(g) Signs. DFS shall have the right to install and operate such signs at any Port of Entry at which DFS has an Operating Facility as are reasonably appropriate to identify DFS, the Operating Facility, or the nature of its operations; provided, however, that such signs (other than signs within any Operating Facility) shall conform to reasonable standards established by CPA with respect to type, size, design, color and location.

(h) Advertising. DFS shall have the exclusive right to contract for, install, and maintain commercial advertising at each Port of Entry. The term "commercial advertising," as used in this Section 3(h), shall not include (a) signs posted or installed by any tenant of CPA upon the premises leased to such tenant identifying such premises as those of such tenant or identifying the products or services which such tenant is authorized to sell or provide at such premises and (b) any advertisements within any Operating Facility. All such commercial advertising shall conform to reasonable standards established by CPA with respect to type, size, design, color and location. All payments to DFS by advertisers for such commercial advertising, together with any monetary consideration received by DFS from third parties for



any commercial advertising by DFS at any Port of Entry (less, in each case, taxes and expenses of DFS associated with all such commercial advertising), shall be paid to CPA. DFS agrees to use its best efforts to maximize revenues from commercial advertising.

(i) Disadvantaged Business Enterprises. If a Disadvantaged Business Enterprise has submitted to CPA or DFS a proposal to engage in the on-premises sale of any of the Merchandise listed hereinbelow at a Port of Entry, and has demonstrated its experience and financial capabilities to the satisfaction of CPA and DFS, then DFS, upon its own initiative or upon the request of CPA, shall grant to such Person, upon such terms and conditions as CPA, DFS and such Person may agree, a subconcession, granting such Person the exclusive or non-exclusive (as the case may be) right to engage in the on-premises sale at that Port of Entry, of any or all of the following Merchandise (but not the use of that Port of Entry for the delivery of Merchandise ordered and/or paid for elsewhere): locally-grown flowers, fruits and vegetables, local geological artifacts, Micronesian Souvenirs, Micronesian Handicrafts, newspapers, magazines and reading materials, film and photographic accessories and any other Merchandise upon which CPA and DFS may agree. All consideration payable under such subconcessions shall be paid directly to CPA, and DFS shall not be entitled to a credit against Concession Fees therefor. Sales made by such Disadvantaged Business Enterprises shall not constitute Gross Sales.

(j) Sea Ports. If CPA substantially redevelops and renovates a sea Port of Entry, and wishes to offer new concession rights for use of that sea Port of Entry, CPA may, upon completion of such renovation and redevelopment, terminate the rights and obligations of DFS hereunder in respect of such Port of Entry; provided, however, that (i) if the new concession rights for use of that sea Port of Entry are offered by public auction or public bid, DFS shall be accorded a full opportunity to seek such rights, (ii) if such rights are offered pursuant to 4 CMC § 2206, DFS shall be considered the then-incumbent concessionaire, and (iii) if such rights are offered in any other manner, DFS shall retain such rights if it meets the best bona fide offer for such rights made by another Person.

(k) Ship's Stores. CPA shall have the right to supply ship's stores and provisions (including but not limited to potable water) to seagoing vessels, and to allow others to do so, but CPA shall not have the right to supply, or allow others to supply, provisions directly to passengers on board such vessels except as may be expressly permitted under any Subconcession Agreements or the Agreement to Enter into Subconcessions.

(1) Rights Not Included. DFS shall not have the right to conduct any activities at any Port of Entry other than those specifically set forth in this Agreement or reasonably appropriate to effectuate the rights granted to DFS hereunder.

4. Term. This Agreement shall commence on the Effective Date, and shall continue in full force and effect for ten (10) years thereafter until the Expiration Date, unless sooner terminated as provided herein.

5. Concession Fees and Taxes. Except as otherwise provided in Section 6, DFS shall pay CPA the following:

(a) Percentage Fee. A percentage concession fee as follows:

(i) November 14, 2005 through May 13, 2008, an amount equal to fifteen percent (15%) of the Gross Sales of DFS during each year of that period;

(ii) May 14, 2008 through November 13, 2010, an amount equal to sixteen percent (16%) of the Gross Sales of DFS during each year of that period;

(iii) November 14, 2010 through May 13, 2013, an amount equal to seventeen percent (17%) of the Gross Sales of DFS during each year of that period; and

(iv) May 14, 2013 through November 13, 2015, an amount equal to eighteen percent (18%) of the Gross Sales of DFS during each year of that period.

(b) Warehouse Fee. DFS shall pay the following monthly fee (the "Warehouse Fee") for the use of the Warehouse Facilities throughout the Term of this Agreement:

From	To	Rate/Sq. Ft.
11/14/2005	11/13/2007	87¢
11/14/2007	11/13/2009	\$1.00
11/14/2009	11/13/2011	\$1.15
11/14/2011	11/13/2013	\$1.32
11/14/2013	11/13/2015	\$1.52

The Warehouse Fee shall be paid monthly in advance on the first (1st) day of each month during the Term.

(c) No Other Fees. Apart from the fees provided for in this Agreement and the consideration being paid by DFS as stated in Section 2(c) above, there shall be no other charge or fee to DFS for DFS' rights under this Agreement.

(d) Waiver of Taxes. On behalf of the government of the Commonwealth, CPA hereby waives the imposition of all Taxes and business license and permit fees and requirements on DFS, its property or its customers relating to operations under this Agreement, except for Concession Fees.

6. Reduction of, and Credits Against, Concession Fees. DFS shall be entitled to the following reduction of or credits against Concession Fees payable under Section 5 hereof:

(a) Breach. DFS shall have as a credit against any Concession Fees due hereunder in respect of any Port of Entry an amount equal to any indemnity obligation of CPA to DFS with respect to such Port of Entry.

(b) Taxes. In the event that DFS, its property or its customers shall be or become subject to any fee or Tax (including, but not limited to, gross revenue tax, excise tax, permit or use tax or sales tax) or license or permit fee, or any increase in any fee or Tax payable hereunder, relating to the operations conducted by DFS under this Agreement, DFS shall have a credit against any Concession Fees due hereunder in an amount equal to such fee, Tax or increase; provided, however, that no credit shall be permitted under this subparagraph (c) for the Concession License Fee, except to the extent that it exceeds \$1,000 per annum, or for the Business Gross Revenue Tax, except to the extent that it exceeds four percent (4%) per annum of Gross Sales. If DFS takes a credit against Concession Fees for any such fees, Tax or increase, and it contests the validity of such fee, Tax or increase and obtains a refund of such fee, Tax or increase, the Concession Fees due hereunder for the month following the month in which it receives such refund shall be increased by the amount of such refund, less any costs and expenses (including but not limited to attorneys' fees) incurred in challenging the validity of such fee, Tax or increase.

(c) Failure to Repair. In the event that CPA fails within a reasonable time to make repairs and/or provide emergency power to the Operating Facilities in accordance with this Agreement, DFS shall be permitted to make such repairs and/or rent or purchase a generator to provide such power. DFS may credit against Concession Fees the reasonable costs of any such repairs and/or the reasonable costs of providing emergency power.

(d) Construction of New Operating Facility. DFS may credit against Concession Fees any costs incurred by it under Section 3(b)(i) hereof.

(e) Insurance Premiums. DFS may credit against Concession Fees the amount of any insurance premiums it pays on behalf of CPA pursuant to Section 12(b).

(f) Adverse Impact on Business. CPA agrees that it shall fully compensate DFS for any injury or diminution of business or other loss, cost or expense incurred as a result of: (i) any change in the Airport or other Port of Entry permitted under Section 8(r); or (ii) any amendment, modification, change, revision or supplement to, or deletion from, any term, condition or requirement of this Agreement which is requested by CPA and consented to by DFS under the provisions of Section 22(f), or which is required by the Federal Aviation Administration or any other federal board, agency, commission or authority as provided in Section 22. Upon the occurrence of any event giving rise to relief under this subparagraph (f), DFS and CPA shall consult with each other and seek to agree on the amount of compensation to which DFS is entitled. If, after such consultation, DFS and CPA cannot agree on appropriate compensation to DFS, then DFS may, at its option, bring legal action against CPA to enforce this provision. CPA agrees that the court in which such action is maintained shall construe and apply this provision with a view toward making DFS whole.

DFS may also credit against Concession Fees the amount of compensation, however established (together with DFS' attorneys' fees and costs in connection with the establishment thereof), for any such injury, diminution of business or loss, cost or expense incurred by DFS.

Nothing contained herein shall be construed as a limitation upon any other remedy DFS may have hereunder, at law or in equity, with respect to a breach of this Agreement by CPA, or with respect to any other matter not expressly dealt with herein.

(g) Credits Generally. Each occurrence that gives rise to a reduction of or credit against Concession Fees pursuant to this Section 6 shall be considered independently, and shall be calculated as against Concession Fees as if no other event which permits a reduction or credit pursuant to this Section 6 had occurred; provided, however, that in no event shall any reduction of or credit against Concession Fees pursuant to this Section 6 exceed the expense, cost, liability or damage actually incurred by DFS as a result of any combination of such occurrences. Except as provided in Section 6(a) hereof, reductions of and credits against

Concession Fees shall be cumulative and shall not be lost if they exceed the Concession Fees for any period. DFS may carry forward indefinitely all Unused Credits, together with interest thereon, until they are applied by DFS against Concession Fees due hereunder or paid to DFS by CPA in United States dollars.

7. Accounting Procedures; Audit.

(a) Accounting Procedures. Within fifteen (15) days following the last day of each month during the Term, DFS shall notify CPA in writing of the Concession Fees accrued at each Port of Entry for the prior month pursuant to this Agreement, and shall submit to CPA, in a form and in such detail as shall be reasonably satisfactory to CPA, a statement setting forth: DFS' Gross Sales at such Port of Entry during that month; Concession Fees due upon such Gross Sales; reductions of or credits against Concession Fees under Section 6, including the appropriate calculations and stating the amount of the Unused Credits, if any, plus accrued interest, remaining as at the end of each such month; and the next Concession Fees due for such month. Each such statement shall be signed by a responsible accounting officer of DFS. Within fifteen (15) days of the end of each month during the Term, DFS shall pay to CPA, in accordance with Section 9(i), the net Concession Fees due to CPA hereunder for the immediately preceding month as shown in such statement.

(b) Books and Records.

(i) DFS shall keep full and accurate books and records showing all of its Gross Sales, and such other information necessary to justify all credits claimed by DFS against Concession Fees. CPA shall have the right, through its representatives, and at all reasonable times, to inspect and audit all such books and records, and DFS hereby agrees that all such books and records will continue to be made available to CPA for at least a three (3) year period.

(ii) DFS shall employ an independent certified public accountant who shall furnish a written annual statement to CPA stating that in his or her opinion (A) the net Concession Fees due CPA from DFS during the preceding year pursuant to this Agreement were calculated in accordance with the terms of this Agreement and (B) all books and records were maintained in accordance with this Agreement. Such statement shall also contain a list of the Gross Sales for each Port of Entry as shown on the books and records of DFS and which were used to compute the Concession Fees due CPA during the period covered by the statement, and a list of all credits taken or claimed by DFS against Concession Fees. Such statement shall

be due and provided to CPA not more than ninety (90) days after the end of DFS' fiscal year.

(iii) Without waiving any other right of action available to CPA in the event of default in payment hereunder, in the event DFS is delinquent for a period of thirty (30) days or more in paying to CPA any fees payable to CPA pursuant to this Agreement, DFS shall pay to CPA interest thereon at the rate of twelve percent (12%) per annum from the date such item was due and payable until the date on which it is finally paid.

(c) Audit. CPA reserves the right to audit DFS' books and records of receipts at any time for the purpose of verifying DFS' Gross Sales hereunder and credits claimed by DFS against Concession Fees. If, as a result of such audit, it is established that as to any Port of Entry DFS has understated its Gross Sales, or overstated allowable credits against Concession Fees, by three percent (3%) or more, the entire expense of said audit shall be borne by DFS. Any additional Concession Fees due CPA shall forthwith be paid by DFS to CPA with interest thereon at twelve percent (12%) per annum from the date such additional sums became due.

#### 8. Covenants of CPA.

(a) No Inconsistent Rights. Except as expressly permitted by this Agreement, the LSG Subconcession Agreement, any Subconcession Agreements and the Agreement to Enter into Subconcessions, CPA shall not grant to any Person any right, or knowingly permit any Person to take any action, that is inconsistent with the rights granted to DFS hereby.

(b) Defense of Rights. CPA, at its own expense, shall defend all rights granted to DFS under this Agreement, and shall diligently prosecute any claim or defense pertaining to such rights. CPA shall notify DFS of any claim against CPA, or against the Commonwealth of which it has knowledge, that challenges or relates to any right granted to DFS under this Agreement, or of any claim brought by CPA against any Person interfering with the rights granted to DFS hereunder. In the event DFS notifies CPA that any Person is interfering with the rights granted to DFS hereby, CPA shall within fifteen (15) days investigate such alleged interference, and if such interference is in fact occurring, CPA shall take all reasonable and proper steps either to terminate such interference or commence legal proceedings against such Person. In any action or proceeding concerning the rights granted to DFS hereunder, CPA consents to DFS' participation in such claim or defense; and each party agrees to fully cooperate with the other in such claim or defense. CPA shall not settle or compromise any such claim in a manner which

would constitute a breach of CPA's obligations hereunder, or which would impair DFS' rights hereunder, irrespective of whether any legal or other proceeding has been commenced, without the prior written approval of such settlement or compromise by DFS.

(c) Airline Use Fees. CPA shall charge all air carriers which are not signatories to an Airline Use Agreement for a particular air Port of Entry a fee for use of that Port of Entry of not less than 150% of the highest fee paid by any signatory to an Airline Use Agreement for that Port of Entry.

(d) Use Fee Proceeds. CPA agrees to establish the use fees it charges users of any air Port of Entry at a level calculated to produce revenues sufficient to enable CPA to operate and maintain the air Ports of Entry.

(e) Duty-Free Status. CPA shall use its best efforts to preserve the status of Duty-Free Merchandise sold or delivered pursuant to this Agreement, free of any impost, duty, tariff, levy or assessment.

(f) Ingress and Egress. CPA shall at all times ensure to DFS, its customers, guests, patrons, invitees, suppliers and employees full and unrestricted right of ingress and egress to the Operating Facilities, and to all Ports of Entry at which DFS makes deliveries pursuant to the rights granted hereunder, including the Airport, over Airport or other Port of Entry roads, including the use of common roadways, subject to such reasonable rules, laws, and regulations as may be established by CPA; provided, however, that no toll or similar charge may be imposed upon any customer, guest, patron, invitee, supplier or employee of DFS for the use of such roads to and from any Operating Facility or Port of Entry unless (and then only to the extent that) CPA uniformly levies such a toll or similar charge on all other users.

(g) Parking. CPA shall provide employees of DFS reasonably convenient and adequate parking space at any Port of Entry, which space shall be designated for use by such employees at a charge (if any) not greater than that generally applicable to other employees of CPA's tenants at such Port of Entry.

(h) Management of Ports of Entry. CPA shall manage the Airport and all Ports of Entry in accordance with sound business practices and in a prudent and efficient manner.

(i) Security Arrangements. CPA shall provide or cause to be provided public fire and police protection at every Port of Entry and at all Operating Facilities similar to

that provided by it to other tenants and users of such Port of Entry, and CPA will use its best efforts to enforce all rules and regulations with respect thereto at all Ports of Entry. DFS shall have the right, but not the obligation, to provide such additional or supplemental protection as it may desire, but such right, whether or not exercised by DFS, shall not in any way be construed to limit or reduce the obligations of CPA hereunder.

(j) Repair and Maintenance. CPA shall provide structural maintenance and repairs to each of the Operating Facilities, and shall provide for washing of all windows (on the outside only) at the Operating Facilities at periodic intervals, but not less than four times per year.

CPA shall, with reasonable diligence, and consistent with its financial capabilities and resources, prudently develop, improve, and at all times maintain and operate with adequate, efficient and qualified personnel and keep in good repair all areas of every Port of Entry, and all appurtenances, facilities and services now or hereafter connected therewith. CPA shall also maintain all essential public roads at the Airport and other Ports of Entry in good and adequate condition for use by cars, buses and trucks.

(k) Emergency Power. CPA shall provide an emergency generator at the Airport and may charge DFS the same fees for the operation of such emergency generator as it charges other tenants at the Airport. At every other Port of Entry at which CPA provides emergency electrical power to any of its tenants, CPA shall provide the same to DFS under the same terms and conditions (including but not limited to use fees) as are applicable to other tenants at such Port of Entry.

(l) Utilities. CPA shall provide to and from the Operating Facilities all utility connections as are available to the Port of Entry at which such Operating Facility is located, of a quality and caliber reasonably necessary to meet the anticipated needs of DFS at the Operating Facilities. In all cases, such utility connections provided by CPA shall meet any and all minimum specifications provided by law, ordinance, rule or regulation of any authority having jurisdiction over such utility within the Commonwealth.

(m) Possession. CPA shall use its best efforts to maintain possession, dominion and control over all Ports of Entry.

(n) Minimal Disruption. CPA recognizes that access to Operating Facilities by the travelling public, and allowing the travelling public a reasonable opportunity to patronize



Operating Facilities, are in the best interests of both CPA and DFS. Accordingly, CPA shall utilize its best efforts to minimize any disruption of the operations of DFS during the construction of a Project, and at all other times during the Term hereof. This covenant shall include the obligation of advance consultation with DFS at all times when access to any Operating Facility will be affected for any reason within the control of CPA, and of implementing the proposals and requests of DFS to minimize any disruption to the greatest extent feasible under the circumstances.

(o) Condemnation. If any Port of Entry, Operating Facility or any part thereof is condemned by any authority, and the effect of such condemnation is a material or substantial interference with, or restriction of, DFS' ability to conduct its business at such Port of Entry or from such Operating Facility, DFS shall have no obligation to operate at such Port of Entry or Operating Facility as of the date that the condemning authority takes possession of such property. CPA is entitled to all the condemnation proceeds; provided, however, that DFS shall be paid that portion of such proceeds attributable to the fair market value of any improvements placed on the condemned premises by DFS and the going concern value of this Agreement at such Port of Entry, Operating Facility or Operating Facilities as if such condemnation had not occurred, and DFS shall also be paid any Unused Credits attributable to such Port of Entry or Operating Facility. In the event of any condemnation of any Port of Entry or Operating Facility, CPA, at the option of DFS, shall, if possible, provide DFS with substitute facilities for those condemned. CPA agrees not to exercise any power of eminent domain it may have in respect of any Operating Facility.

(p) Quiet Enjoyment. CPA agrees and covenants that it is vested by law with the power and duty to carry on the business of acquiring, establishing, developing, extending, maintaining, operating, and managing the Ports of Entry; that it has the power and authority to enter into this Agreement; that DFS, upon payment of all payments and charges to be paid by DFS under the terms of this Agreement, and observing and keeping the agreements and covenants of this Agreement on the part of DFS to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Operating Facilities and the use of the Ports of Entry for the exercise of the rights and privileges granted to it by this Agreement, for the Term hereof, and CPA shall, at its own expense, defend the sole, peaceful and uninterrupted possession by DFS of the Operating Facilities, and the peaceful and uninterrupted use by DFS of the Ports of Entry at which it operates.

(q) Amusement and Gambling Devices. CPA shall not operate, cause to be operated, suffer, permit or license the

operation of any amusement or gambling device at any Port of Entry at which DFS maintains an Operating Facility.

(r) Changes in Ports of Entry. CPA shall make no change in the configuration, traffic patterns or operations of the Airport or any other Port of Entry at which DFS operates hereunder, except as required to facilitate transportation, to promote safety or to comply with federal directives and/or regulations. DFS shall be consulted in advance of the implementation of any such permitted change, with a view toward minimizing the negative impact, if any, of such change on DFS' business at any Port of Entry. CPA shall utilize its best efforts to minimize any negative impact of such change on DFS' business at any Port of Entry.

(s) Airport Budget. CPA shall furnish to DFS, at the same time it furnishes such documents to any airline, the annual budget of CPA and all other documents concerning the operations of the Airport furnished to any airline.

(t) Airline Use Agreements. CPA shall utilize its best efforts to ensure that each Airline Use Agreement provides that the airline (i) shall not infringe upon, or take any action inconsistent with, any right granted to DFS in Section 3 hereof, and (ii) to accept, free of charge, as accompanying baggage, Merchandise purchased by a passenger from DFS at any Operating Facility, or delivered to a passenger by DFS at a Port of Entry, subject only to such airline's usual size and weight limitations on accompanying baggage.

9. Covenants of DFS.

(a) Compliance with Laws. DFS shall not use or permit the Operating Facilities at any Port of Entry to be used, in whole or in part during the Term of this Agreement, for any purpose other than as set forth herein or as is reasonably appropriate to effectuate the rights granted DFS hereunder, except upon receipt of the express prior written consent of CPA. DFS shall refrain from using the Operating Facilities in violation of any present or future law, ordinance, valid rule or regulation at any time applicable thereto of any public or governmental authority, including CPA, which relates to sanitation or the public health, safety or welfare, or operations at and use of the Operating Facilities. DFS shall at all times faithfully obey and comply with all applicable laws, rules and regulations adopted by any governmental body, agency department or any officer of any of the foregoing, having jurisdiction over any Port of Entry or the Operating Facilities; provided, however, that DFS shall have the right, in its own name, to contest in good faith the validity or applicability of any law, ordinance, rule or

regulation of any governmental body, agency, department or any officer of the foregoing, relating to the Operating Facilities or any Port of Entry, or to the operations of DFS.

(b) Vacancy. DFS shall not at any time during the Term voluntarily leave any Operating Facility vacant without the express prior written consent of CPA, except pursuant to a termination of this Agreement as provided in Sections 14 and 15 hereof upon substantial damage to or destruction or condemnation of such Operating Facility.

(c) Leasehold Improvements.

(i) DFS shall have the right to make, install and/or erect structural or non-structural alterations and improvements at any Operating Facility; provided, however, that all such alterations or improvements shall be commenced only after plans and specifications therefor have been submitted to and approved in writing by CPA, and shall not result in a diminution of the value of the Operating Facility. CPA may withhold its approval of any such plans and specifications pending the notification of and approval by the Federal Aviation Administration of such plans and specifications pursuant to the provisions of Part 77 of the Federal Aviation Regulations, 14 CFR Part 77, to the extent that said Part 77 is applicable. Any such alterations shall be without cost to CPA.

(ii) Any leasehold improvements to the Operating Facilities constructed by DFS shall be constructed in a good and workmanlike manner, and in compliance with all applicable laws, rules, ordinances and regulations in effect, including but not limited to any building code of the Commonwealth.

(iii) DFS shall not remove or demolish, in whole or in part, any improvements at an Operating Facility without the prior written consent of CPA, which may, in its discretion, condition such consent upon the obligation of DFS to replace the same by an improvement specified in such consent.

(iv) All improvements made to any Operating Facility by DFS, and additions and alterations thereto, shall be and remain the property of DFS until the termination of this Agreement as to such Operating Facility (whether by expiration of the Term or otherwise), at which time said improvements shall become the property of CPA.

(d) Repair and Maintenance.

(i) Except for structural maintenance of the Operating Facilities and outside window washing by CPA, as provided in Section 8(j), DFS shall, without cost to CPA, maintain each Operating Facility and every part thereof in good appearance and repair, and in safe condition. DFS shall maintain and repair all improvements at an Operating Facility, including furnishings, fixtures and equipment, whether installed by DFS or not. DFS shall repaint the interior of each Operating Facility as necessary, but not less than once every five (5) years. All such maintenance, repairs and replacements shall be of a quality equal to the original in materials and workmanship.

(ii) CPA or its authorized agents may at any reasonable time, without notice, enter any Operating Facility to determine if maintenance satisfactory to CPA is being performed. If it is determined that said maintenance is not satisfactory, CPA shall so notify DFS in writing. If said maintenance is not performed by DFS within thirty (30) days after receipt of written notice, CPA or its agents shall have the right to enter such Operating Facility and perform the maintenance therefor, and DFS agrees to promptly reimburse CPA for the cost thereof.

(iii) DFS shall provide a complete and proper arrangement for the adequate, sanitary handling of all trash, garbage and other refuse caused as a result of its operation at any Port of Entry and shall provide and use suitable covered receptacles for all garbage, trash and other refuse in, or in connection with its use of, a Port of Entry or an Operating Facility. Piling of boxes, cartons, barrels or other similar items shall not be permitted in any public area.

(e) Service Provided by DFS. In its operations under this Agreement, DFS shall do the following:

(i) Each Operating Facility shall be operated at such hours as are appropriate to provide a level of service to the travelling public which is reasonable under the circumstances.

(ii) DFS shall, at any Operating Facility, hold open its facilities and provide service therein to all members of the travelling public who shall conform to and abide by reasonable rules and regulations, if any, adopted by DFS which are applicable to all users without discrimination.

(iii) DFS shall, at any Operating Facility, offer all products and services to its customers and patrons at fair, reasonable and non-discriminatory prices; provided, however, that DFS may make or give such reasonable discounts, rebates or other similar types of price reductions as DFS may

desire to its employees, volume purchasers or other special category customers, including but not limited to, airline employees.

(iv) DFS shall provide, maintain, and operate each of its Operating Facilities in a first-class manner, and shall sell only Merchandise, food, and beverage items of good quality and shall furnish and maintain a standard of service and quality at least equal or superior to that of the better class of similar businesses in the Pacific.

(v) In the operation of an Operating Facility, and otherwise in connection with the rights granted to it under this Agreement, DFS will establish and charge such prices, and offer such quality, which, in each case, shall be comparable to those charged and offered in comparable establishments in the Pacific. If, at any time, CPA determines, through investigation and after discussion with DFS, that such prices or quality vary materially from those at comparable establishments in the Pacific as aforesaid, CPA may require, by written notice to DFS, the lowering or raising, as the case may be, of such prices or changes in quality, so that they will thereafter be comparable to those in effect at other comparable establishments in the Pacific as aforesaid. In any case, DFS shall be given a reasonable opportunity to defend against such findings and to justify the prices charged therefor or quality offered.

(vi) DFS shall operate its business at each Port of Entry at which it operates with due diligence and efficiency so as to produce all of the Gross Sales which may reasonably be produced by such manner of operations.

(vii) DFS shall provide, without charge, change-making services at not less than one cashier's location within each of its Operating Facilities. DFS shall not be obligated to cash checks or to engage in foreign currency exchange transactions.

Notwithstanding the generality of the foregoing covenants, DFS does not assume, shall have no obligation with respect to and the foregoing covenants shall not be deemed to apply to (i) the operation of food and beverage concessions at the Airport by LSG or any Subconcessionaire under the LSG Subconcession Agreement; and (ii) the operation of subconcessions by Subconcessionaires at the Rota and Tinian air and sea Ports of Entry pursuant to the Agreement to Enter into Subconcessions.

(f) Management of Concession. The management, maintenance and operation of each Operating Facility or other concession privilege granted hereunder shall at all times

during the Term hereof be under the supervision and direction of an active, qualified, competent and experienced manager representing DFS, who shall be subject at all times to the direction and control of DFS. DFS will cause such manager to be assigned a duty station or office at each Operating Facility, at which he or she shall be available during normal business hours, and DFS will at all times during the absence of such manager assign or cause to be assigned a qualified subordinate to be in charge of such Operating Facility and to be available at such Operating Facility.

(g) Cash and Record Handling Requirements.

(i) Subject to DFS' right to substitute equivalent cash management systems and to upgrade its equipment, DFS shall, in its operations under this Agreement, at all times observe in all material respects cash handling and record handling systems as follows:

(A) Equipment such as cash registers, or any other electronic or mechanical device used for recording customers' sales, shall have a serial totalizing unit built in them with a continual sequence recording of sales transactions for proper sales accountability. Such sequence totalizing unit shall be sealed or unsealed only in the presence of an authorized and designated representative of CPA. The totalizer of such units may not be turned back, but shall be continuous in adding to each transaction as made. All units shall be placed so that said monitoring can readily be made and the windows thereof shall be properly illuminated so that transactions can be viewed by customers from a reasonable distance when such equipment is in use.

(B) All cash registers, and devices used in recording sales to customers shall have a detail tape for a permanent recording of each sales transaction and shall provide receipts for each sale, which receipts shall be offered to each customer upon each sale without customer's request therefor. The date of each sale and the amount of each item sold, as well as the totalizing of the total sale to each customer, shall be recorded on this detail tape. The date of sale, transaction number and sale amount recorded shall be shown on each sales receipt. All transactions recorded on these devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance.

(C) Cash registers and other electronic or mechanical devices that totalize customers' transactions shall have a reading taken of same at least once each twenty-four (24) hours and recorded for accounting purposes. Adequate security protection is to be maintained so that

unauthorized persons may not tamper with the totalizing unit of such devices.

(D) All sales checks and other records used shall be assigned and show a serial number. Such sales checks and records shall be issued and used, in their several categories and applications, in serial progression. Such sales checks and records shall be protected so that they cannot be used or altered by unauthorized persons. CPA shall be informed from time to time of the starting and ending sequence number of these sales checks and records whenever new sequences are used. If any of these sales checks and records are lost or destroyed within twenty-four (24) months after their date, CPA shall immediately be notified and given a list of the serial numbered item lost.

(E) All persons handling sales shall promptly record said sales (cash or credit) in cash registers and other electronic or mechanical devices and shall not delay or "gang" register or record such sales. From time to time and with mutual agreement of DFS and CPA, such cash handling and record handling systems may be revised upon the advent of technological changes generally accepted by the accounting profession. Such cash handling and record handling systems shall be incorporated in the written policy, rules and regulations of DFS covering their accounting and handling of all transactions of Merchandise and services.

(ii) Adequate fidelity bonds shall be maintained by DFS on its employees whose duties involve the handling of Merchandise or receipts.

(iii) CPA shall have the right to monitor and test all of DFS' services by a responsible shopping service.

(iv) Where customers' sales have not been recorded because of the failure of DFS to comply with this subsection 9(g), DFS shall pay to CPA the Concession Fees which would have been due CPA from such sales, including interest thereon calculated at the rate of twelve percent (12%) per annum. CPA shall have the right to make, through a qualified shopping service, a reasonable estimate of the losses, where they can be reasonably and realistically estimated.

(h) Personnel.

(i) DFS shall, in its operations under this Agreement, employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while in or about any Port of Entry, shall be clean, neat in appearance and courteous at all

times, and shall be appropriately attired, with uniforms in such instances as are appropriate. No personnel employed by DFS, while in or about a Port of Entry, shall use improper language, act in a loud, boisterous or otherwise improper manner or be permitted to solicit business in an inappropriate manner.

(ii) DFS shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the travelling public. DFS shall take all proper steps to terminate employees who participate in criminal acts at a Port of Entry, including but not limited to gambling, prostitution, illegal serving of alcoholic beverages, or acts of fraud and theft.

(i) Payments to CPA. DFS shall make all payments hereunder to CPA in United States dollars to an account designated by CPA.

(j) No Liens. DFS shall pay for all labor done or materials furnished in the construction, repair, replacement, development or improvement by DFS of any Operating Facility, and shall keep said Operating Facility and DFS' possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by DFS' act or omission.

(k) Hazardous Substances. No goods, Merchandise or materials which are explosive or hazardous shall be kept, stored or sold in or at any Port of Entry, and no offensive or dangerous trade, business or occupation shall be carried on therein or thereat, and nothing shall be done therein or thereat, other than as is provided for in this Agreement, which will increase the rate of or suspend the insurance upon said Port of Entry or upon structures of CPA thereat; and no machinery or apparatus shall be used or operated at any Port of Entry which will injure any buildings, structures, or improvements thereat; provided, however, that nothing contained in this subsection (k) shall preclude DFS from bringing, keeping or using on or at a Port of Entry such goods, Merchandise, materials, supplies, equipment, apparatus and machinery as are appropriate or customary in carrying on its business, or from carrying on its business in all respects as is customary.

(l) Performance, Labor and Material Bonds. Prior to the commencement of any construction of improvements hereunder, DFS, or its contractor, shall, with respect to any contract or contracts for an amount in excess of Three Hundred Thousand Dollars (\$300,000) for the construction of such improvements, furnish CPA, without expense to CPA, a surety bond in cash or securities satisfactory to CPA or issued by a surety company licensed to transact business in the



Commonwealth and satisfactory to and approved by CPA, with DFS' contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of such improvements, guaranteeing the prompt payment to all persons supplying labor, materials, provisions, provender, supplies and equipment used directly or indirectly by the said contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in said construction contract and protecting CPA from any liability, losses or damages arising therefrom. In the event that DFS initially furnishes such bond or bonds and thereafter obtains from its contractor or contractors such bond or bonds in like amount which are satisfactory to CPA, and providing the same protection as aforesaid, CPA, upon application by DFS, and upon naming CPA as an additional obligee of DFS' principal and surety under such bond or bonds, shall release DFS from and consent to the cancellation of the bond or bonds originally furnished by DFS under this subparagraph 9(m), it being understood and agreed that nothing herein contained shall prevent DFS' compliance with the provisions of this subparagraph 9(1) by initially obtaining such bonds from its contractor or contractors prior to the commencement of any construction hereunder.

(m) Taxes and Licenses. DFS shall pay any applicable taxes levied or charged upon the Operating Facilities or upon DFS' operations hereunder. DFS shall obtain and pay for any licenses or permits required by law for the construction of improvements, the installation of equipment and furnishings, and the conduct of its operations hereunder.

(n) Objectionable Items. DFS agrees not to sell, at any Operating Facility, any item of Merchandise which CPA finds objectional for display and/or sale in an Operating Facility because it is in poor taste or unsafe, and agrees to immediately remove such item from any Operating Facility upon notice of said objection and thereafter cease and desist from displaying and/or offering such item for sale in any Operating Facility.

10. Representations and Warranties.

(a) Authority to Grant Rights. CPA represents and warrants to DFS that it has the full and unrestricted power and authority to enter into and perform its obligations hereunder, to execute and deliver this Agreement, and to grant to DFS such rights, including without limitation such exclusive rights, as are hereby granted, free and clear of any claim (including any claim to such exclusive rights) of any Person, and that it has taken all actions necessary to authorize the entering into and delivery of this Agreement. The parties further acknowledge and agree that DFS has

executed this Agreement in contemplation of enjoyment of the rights (including, without limitation, the exclusive rights) granted it hereunder, and in reliance on the representation of CPA that it has full and unrestricted power and authority to grant said rights to DFS. Accordingly, interruption or loss of any such rights, for any reason, shall constitute frustration of the commercial purpose of DFS in entering into this Agreement.

(b) No Default. CPA represents and warrants to DFS that, as a result of the execution and delivery of this Agreement, CPA will not be in default in the payment or performance of any obligation under any agreement or undertaking to which it is a party.

(c) No Approval Required. CPA represents and warrants to DFS that no material consent, approval or authorization of, or filing with, any governmental or regulatory authority is required for the execution, delivery or performance by CPA of this Agreement, except such as have been obtained or made and are in full force and effect. No representation or warranty is made herein as to the need to acquire any approval, or make any filing, in respect of any sea Port of Entry.

(d) Title. CPA represents and warrants to DFS that it is the owner or operator of every Port of Entry, subject to the rights of the United States government at West Tinian International Airport and Tinian Harbor.

(e) Enforceability. CPA represents and warrants to DFS that this Agreement is the legal, valid and binding obligation of CPA, enforceable against it in accordance with its terms.

(f) Representations and Warranties. All representations and warranties contained herein shall be deemed to have been made by CPA on the date this Agreement is executed and shall be deemed to have been made again on the Effective Date.

11. The Expansion Project. After the date this Agreement is executed and prior to the Master Concession Expiration Date, CPA shall have completed the Expansion Project. CPA warrants to DFS that such construction shall be completed in a workmanlike manner; and that such construction and the materials used therefor shall meet or exceed all specifications required under any and all applicable laws, rules, ordinances and regulations pertaining thereto, including but not limited to the building code of the Commonwealth, or of any authority having jurisdiction over such construction within the Commonwealth.

12. Insurance and Indemnification.

(a) DFS Insurance.

(i) DFS, at its own cost and expense, shall insure for all risks and extended coverage all leasehold improvements in the Operating Facilities pursuant to this Agreement. Such insurance shall be in an amount equal to one hundred percent (100%) of the full insurable replacement value of such improvements. Any payments received by reason of loss under such policy or policies shall be applied toward repair and reconstruction of such improvements if the Operating Facility is rebuilt. A certificate evidencing such insurance coverage shall be filed by DFS with CPA prior to the Effective Date and such certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to CPA. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with CPA. If such insurance coverage is cancelled or reduced, DFS shall within fifteen (15) days after receipt of written notice from CPA of such cancellation or reduction in coverage, file with CPA a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. In the event that DFS shall at any time fail to furnish CPA with the certificate or certificates required under this Section 12, CPA, upon written notice to DFS of its intention to do so, shall have the right to secure the required insurance at the cost and expense of DFS, and DFS agrees to promptly reimburse CPA for the cost thereof.

(ii) DFS shall maintain in force during the term of this Agreement comprehensive general public liability and property damage insurance, including products liability insurance, in the minimum amount of One Million Dollars (\$1,000,000) with respect to each person and in the sum of Three Million Dollars (\$3,000,000) with respect to each accident or occurrence and in the sum of Five Hundred Thousand Dollars (\$500,000) for injury or damages to property; and DFS agrees that CPA shall be named as an additional insured under such policy or policies of insurance. A certificate or certificates evidencing such insurance coverage shall be filed with CPA within thirty (30) days after the Effective Date, and said certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to CPA. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with CPA. If such coverage is cancelled or reduced, DFS shall, within fifteen (15) days after receipt of written notice from CPA of such cancellation

or reduction of coverage, file with CPA a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. In the event that DFS shall at any time fail to furnish CPA with the certificate or certificates required under this Section 12, CPA, upon written notice to DFS of its intention so to do, shall have the right to secure the required insurance, at the cost and expense of DFS, and DFS agrees to promptly reimburse CPA for the cost thereof.

(b) CPA Insurance. CPA, at its own and expense, shall insure for all risks and extended coverage of all improvements and facilities at all Ports of Entry at which DFS maintains an Operating Facility. Such insurance shall be in an amount equal to one hundred percent (100%) of the full insurable replacement value of such improvements and facilities. Any proceeds received by CPA from such insurance shall be used by CPA to repair or replace the damaged or destroyed improvement or facility. A certificate evidencing such insurance coverage shall be sent to DFS, and such certificate shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to DFS. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be sent by CPA to DFS. If such insurance coverage is cancelled or reduced, CPA shall, within fifteen (15) days after receipt of written notice from DFS of such cancellation or reduction in coverage, file with DFS a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. In the event that CPA shall at any time fail to furnish DFS with the certificate or certificates required under this Section 12, DFS shall have the right to secure the required insurance at the cost and expense of CPA, and CPA agrees to promptly reimburse DFS for the cost thereof.

(c) CPA Indemnity. CPA shall indemnify DFS for any expense, cost, liability or damage, including, without limitation, reasonable attorneys' fees and costs, incurred by DFS due to the failure or refusal, for any reason, of CPA to satisfy, observe or perform any of the terms, conditions or covenants required to be satisfied, observed or performed by CPA pursuant to this Agreement, or if any warranty or representation made by CPA herein shall prove to have been incorrect in a material respect when made.

(d) DFS Indemnity. DFS shall indemnify CPA for any expense, cost, liability or damage, including, without limitation, reasonable attorneys' fees and costs, incurred by CPA due to the failure or refusal, for any reason, of DFS to satisfy, observe or perform any of the terms, conditions or

covenants required to be satisfied, observed or performed by DFS pursuant to this Agreement, or if any warranty or representation made by DFS herein shall prove to have been incorrect in a material respect when made.

13. Damage or Destruction of Premises.

(a) Repairable Within Thirty Days. If all or a portion of any of the Operating Facilities is partially damaged by fire, explosion, the elements, a public enemy, or other casualty, but not rendered untenable, or are rendered untenable but are repairable within thirty (30) days, the same shall be repaired, to the same quality as the previous facility, with due diligence by CPA, using any insurance proceeds available to it, and if no such proceeds are available, or if they are insufficient, using such other funds, if any, available to CPA. If, despite CPA's diligent and good faith efforts, no other funds or proceeds are available to CPA, CPA shall have no further obligation to repair.

(b) Not Repairable Within Thirty Days. In the event any of the Operating Facilities is partially or completely destroyed by fire, explosion, the elements, the public enemy or other casualty, or is so damaged that it is untenable and cannot be repaired or replaced within thirty (30) days, CPA shall, at the option of DFS and in DFS' sole discretion, be required to repair, replace and/or reconstruct such Operating Facility, to the same quality as the previous facility, with due diligence by CPA, using any insurance proceeds available to it, and if no such proceeds are available, or if they are insufficient, using such other funds, if any, available to it. If, despite CPA's diligent and good faith efforts, no other funds or proceeds are available to CPA, CPA shall have no further obligation to repair. If DFS does not exercise its option to require CPA to repair, replace and/or reconstruct such Operating Facility within sixty (60) days after receipt of all information requested by DFS and reasonably necessary to enable DFS to make a decision as to whether or not to exercise such option, CPA shall have no obligation to repair, replace and/or reconstruct such Operating Facility. If within twelve (12) months after the time of such damage and/or destruction to an Operating Facility at the Airport, such Operating Facility shall not have been repaired, replaced or reconstructed, DFS may, in its sole discretion, terminate this Agreement in its entirety, and CPA shall pay DFS, within two (2) months after receipt of said notice of termination from DFS, any Unused Credits as of the date of payment, together with accrued interest thereon to the date of payment. If within twelve (12) months after the time of such damage or destruction to any Operating Facility at a Port of Entry other than the

Airport, such Operating Facility shall not have been repaired, replaced and/or reconstructed, DFS may, in its sole discretion, terminate this Agreement in respect of such Operating Facility. If at any time after termination by DFS CPA repairs, replaces or reconstructs the damaged or destroyed Operating Facility, DFS shall have the right of first refusal to operate such facility. If DFS exercises such right, it shall operate such facility in accordance with this Agreement.

(c) Damage or Destruction of Leasehold Improvements. Should any leasehold improvements made by DFS be damaged or destroyed, they shall, in all instances, be repaired or replaced by DFS, whether or not said damage or destruction is covered by insurance, and if DFS fails to repair or replace such damaged or destroyed improvements subject to a schedule approved by CPA, CPA may make such repairs or replacements and recover from DFS the cost and expense of such repair or replacement.

14. Termination by DFS. This Agreement may be terminated by DFS, in its sole discretion, after the happening of any of the following events, by giving notice of termination:

(a) Abandonment. The abandonment of the Airport as an airline terminal, or the reduction, for a continuous period of six months, by fifty percent (50%) or more in the level of enplaned passengers from the Airport based upon the average monthly level of enplaned passengers during the twelve months immediately preceding the Effective Date.

(b) Governmental Assumption. The lawful assumption by the United States Government, the Commonwealth, or any authorized agency thereof (other than CPA), of the operation, control or use of the Airport or any other Port of Entry, or any substantial part or parts thereof, in such a manner as to substantially restrict DFS from operating thereon for a period of at least ninety (90) days; provided, however, the termination shall apply only to the affected Operating Facility or Port of Entry.

(c) Restriction on Operations. Any event which shall substantially restrict the operations of DFS hereunder for a continuous period of ninety (90) days;

(d) Injunction. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of any Operating Facility or Port of Entry, if such injunction remains in full force for a period of at least ninety (90) days;

(e) Default by CPA. The default by CPA in the performance of any covenant, agreement or obligation herein required to be performed by CPA, and the failure of CPA to remedy such default for a period of sixty (60) days after receipt of written notice from DFS to remedy the same; provided, however, if the nature of the default is such that it cannot be cured with reasonable diligence within sixty (60) days, CPA shall be deemed to have cured such default if it, or its nominee, shall within such sixty (60) day period commence performance and thereafter diligently prosecute same to completion;

(f) Inaccuracy of Warranty or Representation. Any representation or warranty of CPA contained herein shall prove to have been incorrect in any material respect when made;

(g) Destruction of Facility. If any Operating Facility shall be destroyed and not replaced in accordance with Section 13(b); provided, however, if the destroyed Operating Facility is not at the Airport, the termination shall apply only to such destroyed Operating Facility;

(h) Loss of Exclusive Rights. DFS shall lose any of the rights granted to it pursuant to Section 3(d) hereof (other than pursuant to any transfer of rights contemplated by Sections 3(b)(ii), 3(b)(iii) or 3(j)) for a continuous period of ninety (90) days, as a result of any law, regulation, ordinance, rule or court order, or any other action having the force of law, or the compliance by DFS or CPA with any guideline or request from any governmental authority.

15. Termination by CPA. This Agreement may be terminated by CPA, in its sole discretion, by giving notice of termination, if DFS does any of the following:

(a) Nonpayment. Be in arrears in the payment of an amount due hereunder for a continuous period of twenty (20) days after the time DFS receives written notice of such nonpayment from CPA. All payments made by DFS to CPA shall be credited to the oldest amount due by DFS to CPA;

(b) General Assignment to Creditors. Make a general assignment for the benefit of creditors;

(c) Abandonment. Voluntarily abandon any Operating Facility; provided, however, the termination shall apply only to the Port of Entry at which the abandoned Operating Facility is located;

(d) Voluntary Petition in Bankruptcy. File a voluntary petition in bankruptcy;

(e) Default. Be in default in the performance of any of the other covenants and conditions required herein to be kept and performed by DFS for a continuous period of sixty (60) days after DFS receives written notice of said default from CPA; provided, however, if the nature of the default is such that it cannot be cured with reasonable diligence within sixty (60) days, DFS shall be deemed to have cured such default if it, or its nominee, shall within such sixty (60) day period commence performance and thereafter diligently prosecute same to completion.

16. Notice of Termination. This Agreement shall be deemed terminated upon the sending of a notice of termination pursuant to Section 14 or 15.

17. Rights Upon Termination.

(a) Unused Credits. If this Agreement terminates for any reason, CPA shall immediately pay to DFS the Unused Credits, if any, as of the date of termination, together with accrued interest thereon to the date of payment.

(b) Leasehold Improvement Recovery. If this Agreement terminates, or is terminated in respect of any Operating Facility, other than at the expiration of the Term, for any reason other than the default of DFS hereunder, CPA shall, within ninety (90) days of such termination, pay or cause to be paid to DFS, in addition to the amounts due under (a) immediately above, an amount equal to the replacement cost, less depreciation, of the leasehold improvements provided and/or installed by DFS at the affected Operating Facilities.

(c) Leasehold Improvement-Default by CPA. If this Agreement terminates due to a default by CPA, CPA shall pay to DFS, in addition to the amounts due under (a) and (b) immediately above, an amount equal to the value of the rights of DFS under this Agreement, which shall be determined on a going concern basis, as if DFS had not terminated this Agreement and CPA had not defaulted.

(d) Trade Fixtures and Expendables. Upon termination of this Agreement with respect to any Operating Facility for any reason, CPA shall have the right either (i) to require removal by DFS of all trade fixtures and expendables from such Operating Facility, and if CPA so requires, DFS shall remove the same within thirty (30) days from the date of notification of such requirement; and if DFS does not remove the same within such thirty (30) day period, CPA may, at its sole option, either retain title to the same, without any obligation to compensate DFS, or remove the same at the expense and for the account of DFS; or (ii) to purchase



any or all of the same, at fair market value as of the date of termination.

(e) Concession Fee Termination. The obligation of DFS to pay Concession Fees hereunder shall cease as of the date this Agreement terminates.

18. Assignment, Transfer and Subletting.

(a) Any Other Person. DFS shall have the right to assign, transfer or sublet any or all of its rights hereunder to any financially responsible Person having the capacity to fulfill the obligations to which it will be subject hereunder; provided, however, that any such assignment, transfer or sublease shall be subject to the express prior written approval of CPA, which approval shall not be unreasonably withheld. CPA shall notify DFS in writing of its decision to approve or disapprove such assignment, transfer or subletting within thirty (30) days of receipt of the request therefor from DFS. All such assignments to a Disadvantaged Business Enterprise shall, in addition, be made in conformity with Section 3(i).

(b) To a Related Entity. DFS shall have the right, without the consent of CPA, but upon thirty (30) days prior written notice to CPA, to assign, transfer or sublet any or all of its rights and obligations under this Agreement to any parent or subsidiary of DFS or other entity controlled by DFS Group L.P., a Delaware limited partnership, or to any entity into which or with which DFS or such other entity may merge or to which DFS or such other entity sells all or substantially all of its assets.

(c) Involuntary Alienation. The involuntary assignment, transfer or other alienation of any or all of the rights of DFS hereunder, whether by operation of law, order of court, or otherwise, without the express written approval of CPA, shall be void and of no effect.

(d) LSG Subconcession. The parties hereto acknowledge that DFS and CPA are parties to the LSG Subconcession Agreement with LSG and that the LSG Subconcession Agreement shall continue until it expires or is terminated by its terms.

19. Inspection of Premises. CPA, through its duly authorized representatives, agents and other persons for it, may enter upon any Operating Facility at any and all reasonable times during the Term of this Agreement for the purposes of determining whether or not DFS is complying with the terms and conditions hereof or for any other purpose incidental to the rights and obligations of CPA.

20. Holding Over. Should DFS hold over with respect to any Operating Facility after this Agreement has terminated for any reason, DFS shall be deemed to be a tenant at sufferance of such Operating Facility on the same terms and subject to the same conditions as herein provided.

21. Redelivery of Premises. DFS shall, upon termination of this Agreement in whole or in part, quit and deliver up all affected Operating Facilities to CPA peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by DFS or CPA, reasonable use and wear and damage caused by casualty and/or the elements excepted. CPA shall have a specific lien on all property of DFS situated at such affected Operating Facilities as security for the payment of all sums due and owing by DFS to CPA in respect of such Operating Facilities.

22. Public Use and Federal Grants.

(a) Agreements. Each and every air Port of Entry is subject to the terms of those certain sponsor's assurances made to guarantee the public use of such airport as incidental to grant agreements between CPA and the United States of America. CPA represents that none of the provisions of this Agreement is inconsistent with any of the provisions of such grant agreements or lease.

(b) Federal Aviation Act. It is further covenanted and agreed that nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended.

(c) Federal Agencies. The rights of DFS hereunder shall be subordinate to the provisions of any existing or future agreement between the Commonwealth and/or CPA and the United States of America, its boards, agencies and commissions relative to the operation or maintenance of any air Port of Entry, the execution of which is required as a condition precedent to the expenditure of United States funds on the development of such air Port of Entry.

(d) Right to Develop Ports of Entry. It is further covenanted and agreed that CPA reserves the right to further develop or improve all Ports of Entry as it may see fit, and without interference or hindrance. Subject to all other applicable provisions of this Agreement, such development or improvement may involve temporary disruption of DFS' operations or temporary or permanent relocation of Operating Facilities into suitable and comparable substitute space.

(e) Non-Discrimination. DFS, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby consent and agree, as a covenant running with the land, that (i) in the event Operating Facilities are constructed, maintained or otherwise operated by DFS at any Port of Entry for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, DFS shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, as said Regulations may be amended; and (ii) (A) no person on the grounds of race, color, or national origin shall be excluded by DFS from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the use of, said facilities; (B) in the construction of any improvements on, over, or under such land and the furnishing of such services thereon, no person on the grounds of race, color, or national origin, shall be excluded by DFS from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (C) DFS shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, as said Regulations may be amended; and (D) DFS shall comply with all federal and local laws, rules and regulations, including, but not limited to, The Americans with Disabilities Act of 1990 (ADA), The Rehabilitation Act of 1973, the Architectural Barriers Act, and the provisions of Title III; Public Accommodations and Services Operated by Private Entities 28 U.S.C. 1219\81-12183, 12186(B)-12189; 28N CFR Part 36; 36 CFR Part 1191; 49 CFR Part 27; 49 CFR §37.3 Misc. ADA provisions at 42 U.S.C. 12201-12213 prohibiting discrimination against any individuals on the basis of disability. In the event of a breach of any of the nondiscrimination covenants in this subparagraph 22(e), CPA shall have the right to terminate this Agreement and to re-enter and repossess any Operating Facilities and hold the same; provided, however, that DFS, if allegedly in breach, shall have the right to contest said alleged breach under applicable Federal Aviation Administration procedures, and any sanctions under, or termination of, this Agreement shall be withheld pending completion of such procedures.

(f) Right to Amend. In the event that the Federal Aviation Administration or its successors requires modification or changes in this Agreement as a condition precedent to the granting of funds for the improvement of any air Port of Entry, DFS agrees to consent to such amendments, modifications, revisions or supplements to, or deletions of, any of the terms, conditions or requirements of this Agreement

as may be reasonably required to obtain such funds hereunder; provided, however, that in no event will DFS be required to agree to an increase in the fees provided for hereunder, or to any amendment which would substantially reduce its rights or otherwise increase its obligations hereunder.

23. Regulations. The occupancy and use by DFS of each Operating Facility, and the exercise of the rights herein conferred upon DFS, shall be subject to such valid rules and regulations as are now or may hereafter be prescribed by the Commonwealth and by CPA through the lawful exercise of their powers.

24. Future Revenue Bond Issues by CPA. If, at any time during the term hereof, CPA decides to construct additions and/or improvements to the Airport facilities, which additions and improvements will substantially benefit all tenants of the Airport (including DFS) and CPA decides to finance all or a portion of such additions and improvements through the issuance of airport revenue bonds, CPA shall notify DFS of such decision. The notice from CPA shall indicate the purpose of and the financial requirements for such bond issuance. Thereafter, representatives of DFS and CPA shall meet to discuss whether or not DFS will agree to act as a guarantor of such future bond issuance or provide other similar financial accommodation to permit CPA to conclude such issuance. Notwithstanding the foregoing, the rights of DFS hereunder are neither subject to nor in any way conditioned upon DFS' agreement to act as a guarantor or to provide other similar financial accommodation in connection with such future bond issuance and DFS' decision not to act as a guarantor or to provide other financial accommodation shall not permit CPA to terminate this Agreement.

25. Waiver. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same. No waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. There shall be no waiver of any right under this Agreement except by a writing signed by the waiving party. Each and all of the rights, powers, options or remedies given to either of the parties by this Agreement are cumulative, and none of them shall be exclusive of any other or exclusive of any remedies provided by law, and the exercise of one or more rights, powers, options and remedies shall not impair the right to exercise any other right, power, option or remedy.

26. Successors. All terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

27. Notice. All notices, requests, consents, approvals, demands, elections and other communications (collectively, "Notices") required by this Agreement shall be in writing and shall be deemed delivered to a party (a) upon hand delivery to a responsible individual at the address given below for that party; or (b) when sent by facsimile, confirmed by answer back or other positive confirmation of receipt; or (c) two (2) days after mailing to a party by first-class mail, postage prepaid, at the address given below for that party (or as such other address as may hereafter be identified pursuant to this Section 26).

if to DFS to:

DFS Saipan Limited  
DFS Galleria  
Garapan, Saipan  
P.O. Box 528  
Saipan, MP 96950  
Attention: President  
Facsimile: (670) 233-6655

with a copy to:

General Counsel  
DFS GROUP LIMITED  
First Market Tower  
525 Market Street, 33rd Floor  
San Francisco, CA 94105-2708  
Facsimile: (415) 977-2967  
Facsimile: (415) 397-6958

if to CPA to:

Commonwealth Ports Authority  
Saipan International Airport  
Saipan, Mariana Islands 96950  
Attention: Executive Director  
Facsimile: (670) 234-5962

with a copy to:

Jose S. Dela Cruz, Esq.  
The Law Firm of Jose S. Dela Cruz  
P.O. Box 326  
Saipan, MP 96950  
Facsimile: (670) 233-1065

28. Governing Law. This Agreement has been made in and shall be construed in accordance with the laws of the Commonwealth. The venue of any action brought under this Agreement shall lie exclusively in the Commonwealth.

29. Entire Agreement. This Agreement together with the Existing Master Concession, the Agreement to Enter into Subconcessions and the LSG Subconcession Agreement states the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties and agreements made by and between such parties. No alteration, amendment or modification of any of the terms or provisions of this Agreement shall be valid unless made pursuant to an instrument in writing signed by each of the parties hereto.

30. Consent. Except as set forth herein, neither party hereto shall unreasonably withhold any consent required of it, nor shall it impose any burdensome conditions thereon or charge any fees therefor.

31. Headings. The headings contained herein and the Table of Contents are for convenience of reference only, and are not intended to define or limit the scope of any provision of this Agreement.

32. Recording. This Agreement, or an agreed memorandum of it, when executed and delivered will be recorded by CPA at the Office of the Commonwealth Recorder, without cost to DFS.

33. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

34. Rights and Remedies Cumulative; Survival. No right or remedy herein conferred upon either party is intended to be exclusive of any other right or remedy contained herein, and every such right or remedy shall be cumulative and shall be in addition to every other such right or remedy contained herein, or now or hereafter existing at law or in equity or by statute, or otherwise. The termination of this Agreement shall not release either party from any obligation, or discharge either party from any liability, that was incurred by it prior to termination of this Agreement.

35. Waiver of Immunities. CPA agrees: that it and its property shall irrevocably be subject to suit by DFS for purposes of enforcing this Agreement; and that, in connection with this Agreement a court may, in such a suit, order such

interim and permanent relief against CPA as is appropriate, including, without limitation, preliminary and permanent injunctive relief, specific performance, damages and orders in aid of execution of court ordered relief; provided, however, that no order shall be entered against CPA that would require CPA to sell physical assets that are essential for necessary air or sea services for the Commonwealth.

36. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

COMMONWEALTH PORTS AUTHORITY

By

  
Name: VICTOR HOCOG  
Title: Chairman, Board of Directors

DFS SAIPAN LIMITED

a Commonwealth of the Northern  
Mariana Islands corporation

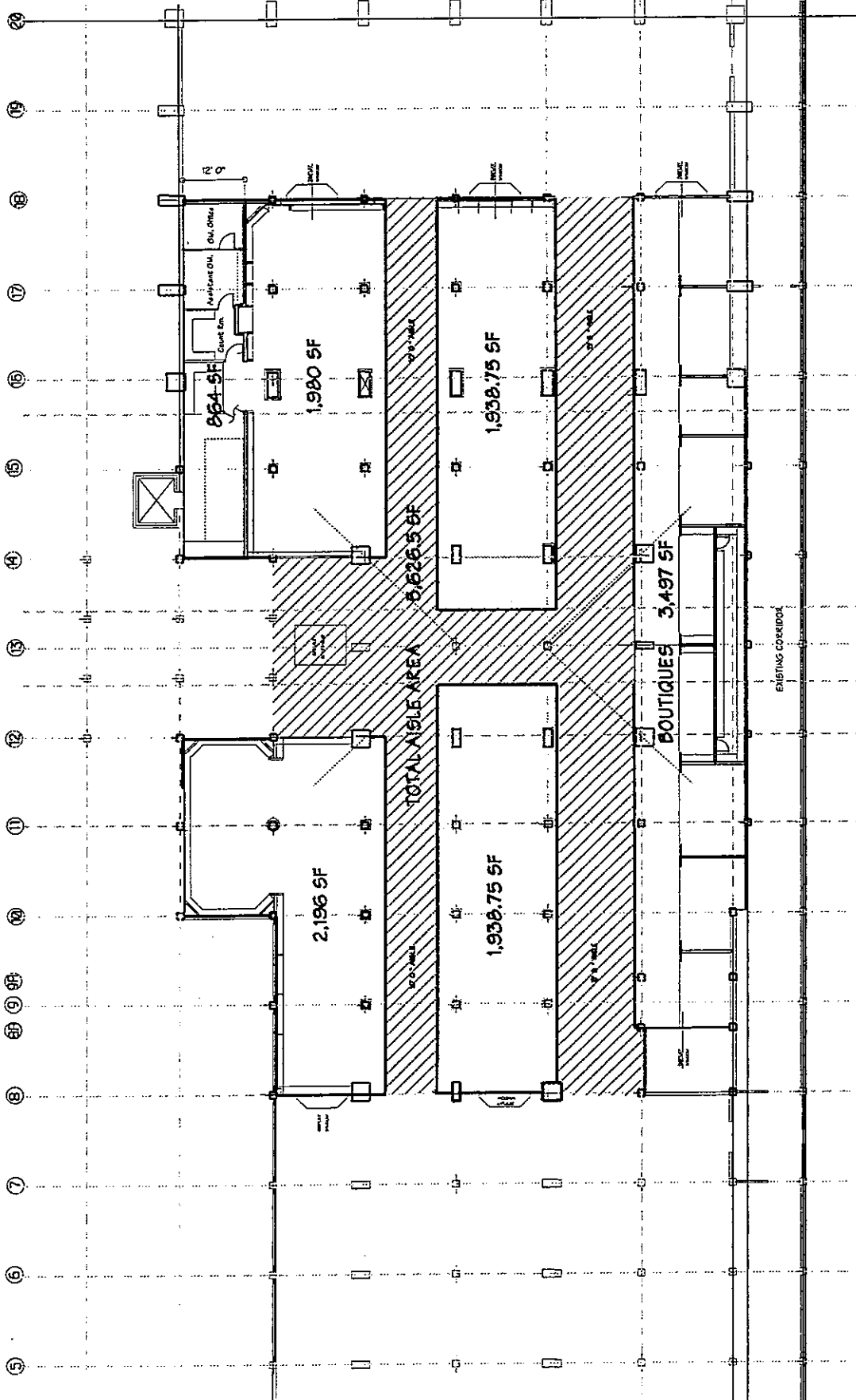
By

  
Name: MARIAN ALDAN-PIERCE  
Its Authorized Representative

APPROVED AS TO FORM AND LEGALITY  
FOR THE COMMONWEALTH PORTS AUTHORITY:

By

  
JOSE S. DELA CRUZ  
Legal Counsel

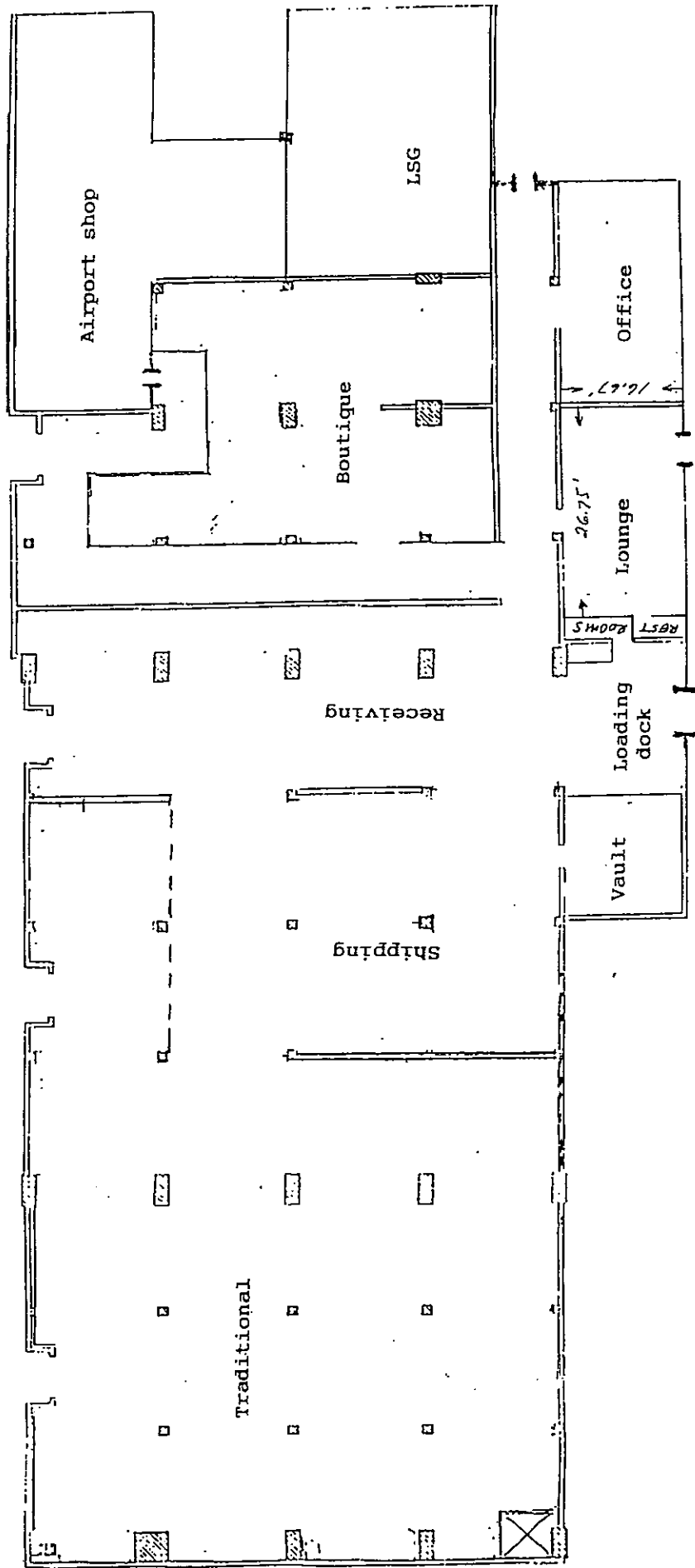


SECOND FLOOR PLAN

# DFS SAIPAN AIRPORT GALLERIA EXPANSION

SCHEDULE I





Saipan Airport - Lower level  
 RICHARD L. BAUGHMAN & ASSOCIATES  
 PINE LAKE, NEW JERSEY

SCHEDULE II