



City and Borough of Sitka


PUBLIC WORKS


100 LINCOLN STREET • SITKA, ALASKA 99835

PHONE (907) 747-1804 • FAX (907) 747-3158

MEMO

To: Mayor McAdams and Assembly Members
Jim Dinley, Municipal Administrator

Through: Michael Harmon, Public Works Director 

From: Scott Brylinsky, Public Works Operations Manager 

Date: December 16, 2009

Subject: Approve lease assignment

Background

City and Borough of Sitka owns the airport terminal building (terminal), which is built on land leased from the State of Alaska. Lotta Latte operates an espresso stand at leased space at the terminal, based on a tenant lease with the City and Borough of Sitka. The owner of Lotta Latte desires to sell the business to Ground Control LLC, and assign her tenant lease. The terms of the tenant lease at Article V(c) requires Assembly written approval for any assignment, with approval not to be arbitrarily withheld. The State of Alaska "Sublease Guidelines for Tenants" also require approval by the State of Alaska, Department of Transportation and Public Facilities, of any assignment of the terminal tenant leases. Further, the assignee must obtain and provide proof of the required Insurance coverage in accordance with the tenant Lease at Article VI .

Recommendation

Approve tenant lease assignment, contingent on receipt of proof of the required insurance coverage and approval from the State of Alaska, Department of Public Facilities of the assignment.

Attachments: Lease and lease extension
Lease assignment document

LEASE

THIS INDENTURE OF LEASE, made this 5 day of March, 2004, by and between the CITY AND BOROUGH OF SITKA, ALASKA, acting through its Administrator (hereinafter called the City) and Deb Miller, dba Lotta Latte, (Hereinafter called the Tenant):

WHEREAS, the City owns and operates the Sitka Rocky Gutierrez Airport Terminal Building (hereinafter "the Terminal Building"), located in Sitka, Alaska:

WHEREAS, the Tenant desires to lease space in said Terminal Building for the purpose of operating an espresso stand.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

The City hereby leases to the Tenant Space L-4, 255 square feet of space in the said Terminal Building for use by the Tenant to conduct all the above mentioned activities. See attached drawing (Exhibit A).

ARTICLE II

The term of this lease shall be for a period of five years, commencing on the 1st day of March, 2004, and end on the 28th Day of February, 2009, unless sooner terminated or extended as hereinafter provided. Notwithstanding the previous sentence, the lease may be extended for an additional two years beyond the five-year term set out in the previous sentence if the parties agree to the extension. To be effective, the option to extend must be jointly exercised by both parties and the amendment effecting the extension executed no earlier than twelve months before the end of the original five-year lease term and no later than six months before the end of the original five-year lease term. The parties shall agree to any new terms in the extension when the amendment effecting such extension is executed.

ARTICLE III

The Tenant promises and agrees to pay the City for the use of the premises, facilities, services, and privileges granted hereunder, a basic annual rental and variable annual maintenance and operation cost in the amounts as set forth in paragraphs (a) of this article; all payable in monthly installments in advance, in cash or by check, bank draft, or money order, made payable to the City and Borough of Sitka, and delivered or mailed to 100 Lincoln Street, Sitka, AK 99835, by or on the first day of each calendar month; said rental and service charge shall become delinquent if not paid within ten (10) days after the due date; and in the event the effective date of commencement or termination of the term of this lease falls on any date other than the first or last day of the calendar month, the rental and service charge for that month shall be paid pro rata according to the number of days in such month. Penalty for late payment is \$50 for each event.

(a) The lease rate for the initial five-year term described in Article II shall be **\$1.70** per foot, per month plus City and Borough sales tax.

ARTICLE IV

The Tenant, at its own cost and expense, may furnish and construct or install other improvements and interior partitions and doors within the leased area which it will determine to be necessary for use in carrying out the purpose for which this lease is intended, and shall furnish and install electrical wiring deemed necessary by it, other than that provided by the City in the initial construction of the Terminal Building. At the termination of the lease, the Tenant shall, at its own expense, replace any partitions, doors or other improvements which existed at the beginning of the lease, if requested by the City.

ARTICLE V

The tenant covenants and agrees:

(a) Not to make any alterations of the leased premises without prior written approval of the City and Borough of Sitka Facilities Manager.

(b) Not to display any signs, advertising, or similar matter without written approval of the City and Borough of Sitka Facilities Manager.

(c) Not to assign this agreement nor sublet the premises or any part thereof, without written approval of the City, such approval shall not arbitrarily be withheld.

(d) To observe and obey all rules and regulations which may from time to time, during the term of this agreement, be promulgated by the City or its designated representative for the use, care, operation, maintenance, and protection of the Terminal Building.

(e) To permit the City and Borough of Sitka Facilities Manager or his representative to enter and inspect the leased premises at any and all times. Routine or planned inspections shall be conducted so as not to interfere with the normal operations of the Tenant.

(f) Not to install any radio transmitting equipment without the written approval of the City and Borough of Sitka Facilities Manager of the City and Borough of Sitka, and to discontinue upon request of the City and Borough of Sitka Facilities Manager the use of any machinery or installation causing interference to City, State, or Federal government radio receiving or transmitting equipment until the cause of such interference has been eliminated.

(g) To keep the leased premises and utilities and installations thereon clean and in a sanitary condition in conformance with the rules and regulations of the governing health authorities, and with all rules and regulations which may be promulgated from time to time during the term of this agreement by the City, State, or Federal department or agency covering the use of, or operation of any facilities on, the leased premises.

(h) To maintain the premises in good repair and appearance and in a safe condition at all times; and to do or cause to be done without delay all those things which, in the opinion of the City and Borough of Sitka Facilities Manager, are necessary or desirable in the interest or safety or to maintain the premises in good repair and appearance.

(i) To conduct all operations and business on the airport and in the terminal building in an orderly and peaceful manner and not to cause any interference to other tenants, users, or occupants of the airport. In the event of any controversy, the decision of the Public Works Director shall be final and conclusive and shall be binding upon the Tenant.

(j) To peaceably and quietly quit and surrender the premises to the City at the expiration of the term fixed, or sooner termination of the lease.

(k) To abide by the language included in the last two sentences of Article IX of the current lease agreement between the City and Borough of Sitka and the Nugget Restaurant. The language reads as follows: "Tenant (Nugget Restaurant) shall have a right of first refusal with regard to any other limited food or drink sales operations proposed within the building. No other restaurant or lounge business shall be allowed in the building." The subject agreement with the Nugget Restaurant expires on March 31, 2014, unless sooner terminated or extended.

ARTICLE VI

(a) The tenant shall assume liability for damage to property of, or personal injury to, its directors, officers, agents, employees, invitees, and guests arising out of, or in connection with, the Tenant's use of the leased area, and the Tenant shall indemnify, defend, and save harmless the City, its officers, employees and agents from any and all claims, suits, losses, damages, damages to property and injuries to persons, of whatever kind or nature arising from actions by the Tenant in the conduct of its operations on the leased premises made available to the Tenant hereunder, or resulting from carelessness, negligence, or improper conduct of the Tenant of any or its directors, officers, agents, employees, invitees, or guests.

(b) The Tenant shall obtain and maintain continuously in effect at all times during the term hereof, at the Tenant's sole expense, general liability insurance protecting the City against liability which may accrue against the City by reason of the Tenant's conduct incident to the use of the premises, or resulting from any accidents occurring in or about the roads, driveways, ramps, or other public places used by the Tenant in the operations hereunder caused or rising out of any act or omission of the Tenant. Such insurance shall provide liability limits of \$1,000,000 for personal injury, death, or property damage, combined single limit. Such insurance shall name the City and the State of Alaska as a co-insured thereunder, and shall contain a waiver of subrogation endorsement. The Tenant shall carry such insurance under a policy requiring the insurance carrier to give the City at least thirty (30) days written notice prior to cancellation of the policy by certified U.S. mail.

(c) No more than thirty (30) days after the signing of this lease, the Tenant shall deposit with the City, a copy or copies of such insurance policy or policies, or a certificate of such insurance coverage as evidence that the coverage required herein has been obtained by the Tenant of his obligations under this lease.

(d) The City agrees to notify the Tenant in writing, as soon as practicable, of any claim, demand, or action rising out of an occurrence covered hereunder and to cooperate with the Tenant in the investigation and defense thereof, unless the City believes its interests conflict with those of the Tenant.

(e) No sooner than thirty (30) days after the signing of this lease, the Tenant shall deposit with the City, proof of Workman's Compensation, Worker's Compensation insurance satisfying the requirements of the Alaska Worker's Compensation Act. This proof shall be in the form of either a certificate from the insurer or a certificate issued by the Alaska Worker's Compensation Board. The certification shall require the insurer to give the City thirty (30) days written notice before cancellation.

ARTICLE VII

(a) If the Terminal Building shall be partially damaged by fire, earthquake, or other casualty, but not rendered untenable, the charges and fees payable with respect to the space used by the Tenant exclusively, or in common with others in such damaged premises, shall be proportionately reduced until such time as the premises shall be in order.

(b) If the damage shall be so extensive as, in the determination of the City, to render the building untenable, the rent shall be paid up to the time of such destruction, and thereupon this lease and all rights and obligations of the parties hereunder, and the tenancy hereby created shall wholly cease and expire.

ARTICLE VIII

The failure of the City to insist in any one or more instances upon strict performance by the Tenant of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in the agreement, shall not be considered as a waiver or relinquishment thereof for the future, but the same shall continue and remain in full force and effect, and no waiver by the City of any provisions, terms, covenants, reservations, conditions, or stipulations hereof shall be deemed to have been made in any instance unless expressed in writing by the City.

ARTICLE IX

It is specifically understood that only the City shall have the authority to allow vending machines to be placed in the Terminal Building. All commissions from vending machines shall be deposited by the City in the Airport Building Account. Any vending machines proposed to be placed in an area under lease to the Tenant, shall be with the full concurrence of the Tenant.

ARTICLE X

At the termination or expiration of this lease, unless otherwise agreed by the parties, all partitions, wiring, and piping, and other improvements made or installed by the Tenant shall remain the property of, and shall be removed by the Tenant, leaving the premises in their original condition, normal wear and tear excepted.

ARTICLE XI

The City may cancel this lease and recover and resume possession of the leased premises and may remove all persons and property therefrom without being liable for prosecution therefor, by giving the Tenant thirty (30) days advance written notice upon or after the happening of any one of the following events:

(a) The failure of the Tenant to pay the rent and maintenance and operation charges herein specified, or any part thereof, when due.

(b) The Tenant shall fail to perform any of the covenants, conditions, provisions, and agreements herein contained.

(c) The filing of a petition in bankruptcy by or against the Tenant.

(d) The Tenant shall be adjudged insolvent by any court.

(e) The appointment of any trustee or receiver of the Tenant's assets in any proceeding by or against the Tenant.

(f) Checks returned for reason of insufficient funds, which have been made for payment of rents due.

(g) Failure of the Tenant to use the premises for the purposes for which this lease was intended.

(h) The Tenant does not maintain satisfactory operation or commits discriminatory acts.

ARTICLE XII

The Tenant agrees that in case of any national emergency, as declared by the Federal government, State government, the City shall not be held liable for any liability to perform any or all of this agreement due to such national emergency.

ARTICLE XIII

If the premises hereby leased are to be used by the Tenant to aid in carrying out a right, grant, privilege, license, or permit from the State or Federal government, or any agency thereof, to the Tenant, and such right, grant, privilege, license, or permit should be terminated during the term of this lease, the Tenant may cancel this lease by giving the City thirty (30) days advance written notice upon or after such termination.

ARTICLE XIV

Notices to the City provided for in this lease shall be sent by registered mail, postage prepaid, addressed to: City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835; and notice to the Tenant shall be sent by registered mail to:

Deb Miller, dba Lotta Latte, 708 Lake Street, Sitka, Alaska 99835
or other such addresses as the parties may designate in writing from time to time.

ARTICLE XV

The Tenant covenants and agrees that if required, it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E to insure that no person shall on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this sub part. The Tenant assures that it will require that its covered sub organizations provide assurances to the Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations as required by 14 CFR Part 152, Subpart E to the same effect.

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

The concessionaire agrees to include the above statements in any subsequent concession agreement that it enters and cause those businesses to similarly include the statements in further agreements.

ARTICLE XVI

The Tenant covenants and agrees that the City may modify this lease to meet revised requirements for Federal or State grants, or to conform to the requirements of any revenue bond covenant to which the City is a part; provided that, in the case of modification to conform to the requirements of any revenue bond covenant, the modification shall not act to reduce the rights or privileges granted the Tenant by this lease nor act to cause the Tenant financial loss.

ARTICLE XVII

This offer to lease or permit is made subject to applicable laws and regulation of the City and may be withdrawn without notice at any time after thirty (30) days from submission thereof unless within such thirty (30) days the Tenant or permittee executes and returns this lease or permit to the City or grantor.

ARTICLE XVIII

If any terms, provisions, conditions or part of this lease is declared by a court of competent jurisdiction of the State of Alaska to be invalid or unconstitutional, the remaining terms, provisions, conditions, or parts shall continue in full force and effect as though such declarations were not made.

ARTICLE XIX

The Tenant agrees that the first priority use of the Airport Terminal Building is to accommodate aircraft for passenger use. The lease holder agrees to relocate to comparable space within the building or expanded building, if required to accommodate this priority at no cost to the City.

ARTICLE XX

During the term of this lease, Tenant shall pay, in addition to the rents when due and payable, all taxes, assessments, rates, charges, and utility bills which Tenant may become liable to pay, including any tax on leaseholds imposed generally on tenants and Tenant shall promptly pay or otherwise cause to be discharged any claim resulting or likely to result in a lien other than a mortgage lien against the leased premises or the improvements placed thereon. The Tenant shall pay or collect and transmit, or both, as applicable, any sales tax which pertains at the Sitka Airport.

ARTICLE XXI

This lease shall terminate with no further obligations by either party if the City and Borough stops operating the Sitka Rocky Gutierrez Airport Terminal Building at its present location.

ARTICLE XXII

The Assembly of the City and Borough of Sitka must approve any lease by ordinance before it becomes effective. The State of Alaska's Department of Transportation and Public Facilities must approve any lease before it becomes effective. A lease extension may be accomplished by the City and Borough Administrator without Assembly approval.

IN WITNESS WHEREOF the parties hereto have set their hands the day and year stated in the acknowledgment below.

CITY AND BOROUGH OF SITKA

[Signature]
Hugh R. Bevan, P.E., Administrator

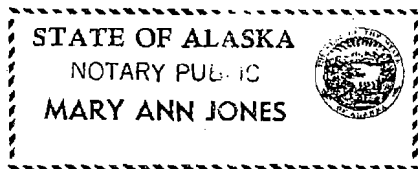
[Signature]
Deb Miller, Owner

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

MUNICIPAL ACKNOWLEDGMENT

THIS IS TO CERTIFY that on this 17th day of March, 2004, before me, a Notary Public in and for the State of Alaska, personally appeared Hugh R. Bevan, P.E. to me known and known to me to be the person whose name is subscribed to in the foregoing lease on behalf of the CITY AND BOROUGH OF SITKA, and after being first duly sworn according to law he stated to me, under oath, that he is the ADMINISTRATOR of the CITY AND BOROUGH OF SITKA, a corporation organized under the laws of the State of Alaska, that he has been authorized by said corporation to execute the foregoing lease on its behalf and he executed the same freely and voluntarily as the free act and deed of said corporation.

Witness my hand and official seal the day and year in this certificate first above written.



[Signature]
Notary Public for Alaska
My commission expires: 10/14/2006

STATE OF ALASKA)
) ss.

FIRST JUDICIAL DISTRICT)

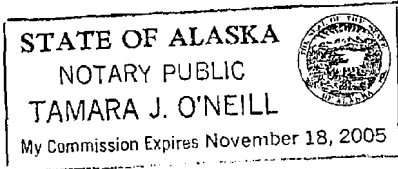
THIS IS TO CERTIFY that on this 5th day of March 2004, before me, a Notary Public in and for the State of Alaska, there personally appeared Deb Miller, who in my presence executed the foregoing lease and acknowledged to me that she signed said lease freely and voluntarily for and in behalf of herself and that she signed the lease for the purposes stated herein.

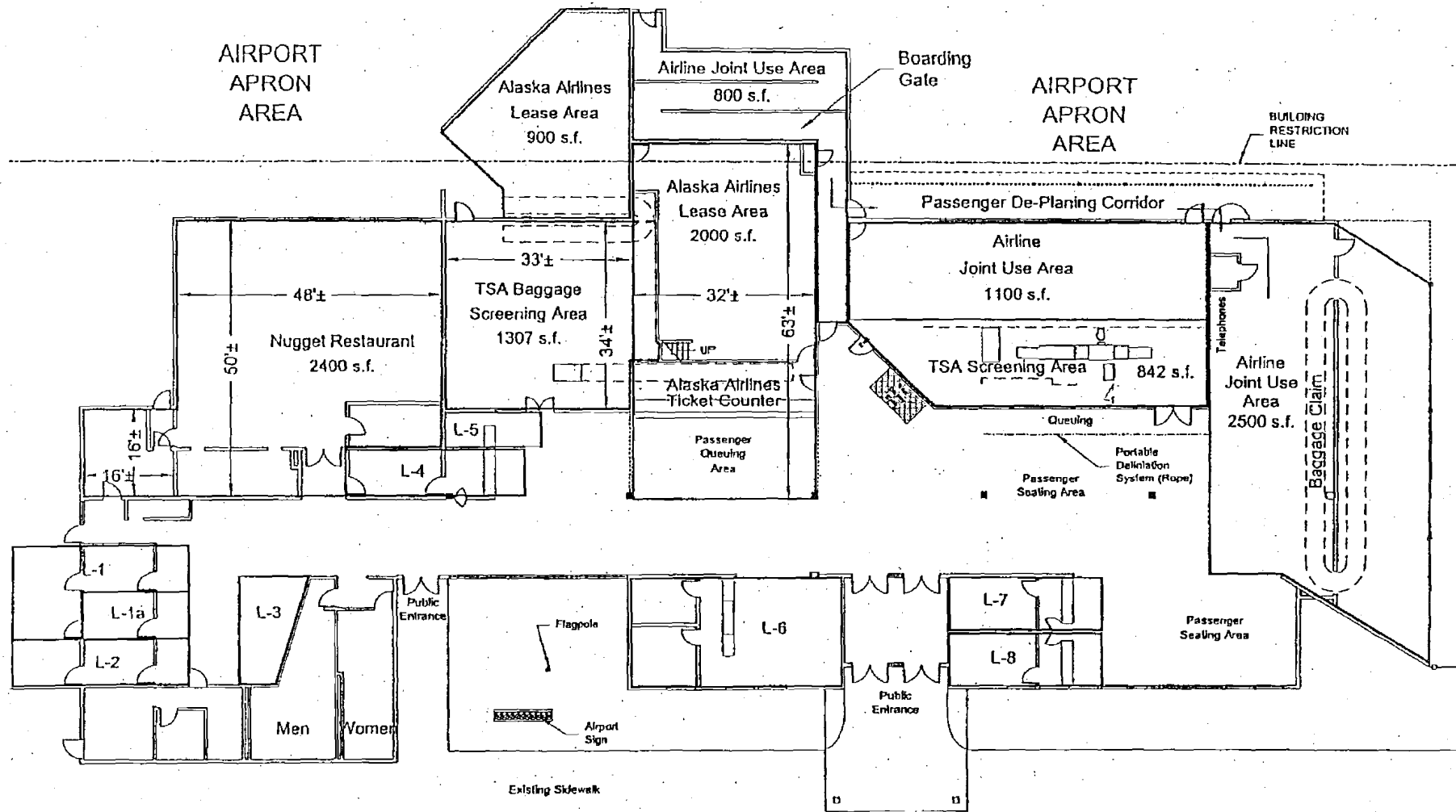
IN WITNESS WHEREOF, I have affixed my signature and seal on the day and year above written.

Tamara J. O'Neill


Notary Public for Alaska

My commission expires:





- L-1 Counter, Office & Outside Storage Space 356 s.f.
- L-1a Counter, Office & Outside Storage Space 150 s.f.
- L-2 Counter, Office & Outside Storage Space 202 s.f.
- L-3 Secure Floor Space 181 s.f.
- L-4 Counter & Office Space 255 s.f.
- L-5 Counter Space 114 s.f.
- L-6 Counter, Office & Storage Space 798 s.f.
- L-7 Counter & Office Space 243 s.f.
- L-8 Counter & Office Space 249 s.f.



City and Borough of Sitka
DEPARTMENT OF PUBLIC WORKS
100 LINCOLN STREET • SITKA, ALASKA 99835
TEL (907) 747-1804 FAX (907) 747-3158

**SITKA-R.G. AIRPORT
SUBLESSEE
USE AREAS**

DRAWN: PAR/TAD	SCALE: N.T.S.
CHECKED: RAR	DATE: 31 Dec 03
DRAWING NAME: Leases Dec 03	
SHEET NO. 1 / 1	

AGREEMENT REGARDING EXTENSION OF TENANT LEASE

The tenant lease ("Tenant Lease") at the Sitka Rocky Gutierrez Airport Terminal Building ("Terminal"), executed on March 1, 2004 between City and Borough of Sitka ("City") and Deb Miller, d/b/a Lotta Latte ("Tenant"), referred to as "the Parties", is extended by the Parties in accordance with the Tenant Lease at Articles II and XXII. The Parties agree to extend the Tenant Lease for the two-year period allowed by Article II. The Tenant Lease extension period is from March 1, 2009 until February 28, 2011.

All terms and conditions set out in the Tenant Lease remain in effect during this Tenant Lease extension period.

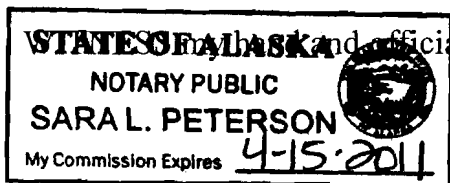
The extension of the Tenant Lease is contingent on the Tenant providing proof of insurance as required by the Tenant Lease at Article VI during the Tenant Lease extension period. The extension of the Tenant Lease is also contingent on the State of Alaska, Department of Transportation and Public Facilities, approving the extension.

CITY AND BOROUGH OF SITKA

James Dinley
James Dinley, Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on the 16 day of December, 2009, before me, a Notary Public in and for the State of Alaska, personally appeared JAMES DINLEY, known to me to be the Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, that he has been authorized to execute this document on its behalf and he signs freely and voluntarily.



and official seal the day and year in this certificate.
Sara L. Peterson
Notary Public for Alaska
My Commission expires: 4-15-2011

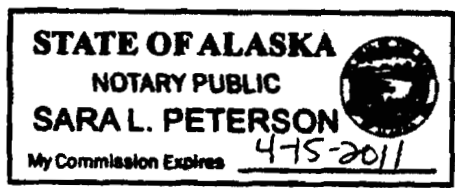
LOTTA LATTE

Deb Miller
Name: Deb Miller, Owner

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on the 16 day of December, 2009, before me, a Notary Public in and for the State of Alaska, personally appeared Deb Miller, known to me to be the Owner of Lotta Latte, that she has been authorized to execute the foregoing document on its behalf and she signs freely and voluntarily.

WITNESS my hand and official seal the day and year in this certificate.



Sara L Peterson
Notary Public for Alaska
My Commission expires: 4-15-2011

CONSENT TO ASSIGNMENT OF TENANT LEASE

City and Borough of Sitka (“City”) owns the terminal building (“Terminal”) at Sitka Rocky Gutierrez Airport in Sitka, Alaska, but leases the Terminal real property from the State of Alaska, Department of Transportation and Public Facilities, based on a Lease Agreement, dated June 1, 1997.

A tenant lease agreement or sublease agreement was entered into between the City and Deb Miller, d/b/a Lotta Latte (“Tenant”), on March 5, 2004 (“Tenant Lease”). The Tenant Lease at Article I and II allows the Tenant to operate an espresso stand at Space L-4 of the Terminal for a five year term, beginning March 1, 2004 and ending February 28, 2009. The Tenant Lease at Articles II and XXII allows for a two year extension of the Tenant Lease that can be approved by the Municipal Administrator. The Tenant and City have agreed to the two year extension of the Tenant Lease and executed an Agreement Regarding Extension of Tenant Lease, with the Tenant Lease now expiring on February 28, 2011.

The Tenant has requested assigning the Tenant Lease in accordance with the Tenant Lease at Article V(c), which states:

“The tenant covenants and agrees: not to assign this agreement nor sublet the premises or any part thereof, without written approval of the City, such approval shall not arbitrarily be withheld.”

City consents to the assignment of the Tenant Lease, including all rights, title, obligations, and interests of the Tenant Deb Miller to Ground Control, LLC (“Assignee”), 108 Chirikov Dr., Sitka, Alaska 99835. This consent is contingent upon the Assignee providing proof of insurance as required by the Tenant Lease at Article VI before any execution of this document. However, this assignment shall not operate as a release of Deb Miller, d/b/a Lotta Latte, from any remaining obligations as Tenant under the Tenant Lease.

GROUND CONTROL, LLC.

Name: _____
Title: _____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on the ____ day of _____, 2009, before me, a Notary Public in and for the State of Alaska, personally appeared _____, known to me to be the _____ of Ground Control, LLC., that s/he has been authorized to execute the foregoing document on its behalf and s/he signs freely and voluntarily.

WITNESS my hand and official seal the day and year in this certificate.

Notary Public for Alaska
My Commission expires: _____