DRAFT: 07/23/13

LEASE AND DEVELOPMENT AGREEMENT

between

THE CITY OF AUSTIN

and

ABIA RETAIL, L.L.C.

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EXHIBITS AND SCHEDULES:

LEASE AND DEVELOPMENT AGREEMENT

THIS LEASE AND DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the ___ day of _____, 2013 ("Effective Date"), by and between the **CITY OF AUSTIN, TEXAS**, a municipal corporation and home-rule city principally situated in Travis County (the "City"), and **ABIA RETAIL, L.L.C.**, a Texas limited liability company ("Developer").

RECITALS:

WHEREAS, the City is the owner of that/those certain tract(s) or parcel(s) of land containing in the aggregate approximately sixteen (16) acres within the boundary of the Austin-Bergstrom International Airport ("ABIA" or the "Airport"), which land is shown or described in Exhibit "A" (Exhibit "A" being sometimes herein referred to as the "Site Map"), attached hereto and made a part hereof for all purposes (the "Land"); and

WHEREAS, the City desires to enter into a contract with Developer to lease, design, develop, construct, operate and manage the Facilities on the Land.

NOW, THEREFORE, for and in consideration of the premises, benefits, covenants and agreements contained herein, and in consideration of the rentals to be paid to the City as provided for herein, the City and Developer do hereby agree as follows:

W I T N E S S E T H :

ARTICLE I. DEFINITIONS

1.1 Schedule 1 Defined Terms. Those capitalized terms set forth on Schedule 1, which is attached hereto and made a part hereof, are intended to have the meanings assigned to them there.

1.2 Other Defined Terms. Other capitalized terms used herein are intended to have the meanings ascribed to them as set forth elsewhere in this Agreement.

ARTICLE II. DEMISE OF THE LAND

2.1 Granting Clause. Upon and subject to the terms and provisions of this Agreement, the City hereby leases to Developer, and Developer hereby leases from the City, the Land.

ARTICLE III. TERM

3.1 Term. The term ("Term") of this Agreement shall commence on the Effective Date of this Agreement and shall expire at 11:59 p.m., Central Standard (or, if then applicable, Daylight) Time, on the last day of the four hundred eightieth (480^{th}) calendar month following the Final Phase Rent Commencement Date (the "Expiration Date").

3.2 Right of Reverter. Upon the Expiration Date or, as the case may be, any earlier termination of this Agreement for any reason whatsoever, whether in its entirety or as to any particular Phase, all Facilities (subject to Developer's right to remove only the Removable Fixtures) constructed or installed on the Land or any applicable portion thereof will thereupon revert to, and become the sole property of, the City, free and clear of any mortgage, lien or other encumbrance, and without payment from the City or any other remuneration to Developer of any kind.

ARTICLE IV. PHASING AND DEVELOPER'S PRE-CONSTRUCTION RIGHTS AND DUTIES

4.1 Phasing. Developer may exercise its right to lease the Land in up to, but no more than, four (4) phases (each referred to herein as a "Phase," or together or collectively, as the case may be, as "Phases").

4.1.1 The first (1st) such Phase (herein referred to as the "First Phase" or "Phase 1") contains not less than 3.0 acres of the Land, the general location and approximate configuration of which being shown on Exhibit "A-1" attached hereto. Upon the Acceptance Date with respect to each Phase, and pursuant to an amendment to this Agreement in a form mutually and reasonably acceptable to the City and Developer, the metes and bounds description of the First Phase and the perimeter metes and bounds description of the subsequent Phases, each as reflected on the applicable Survey therefor approved by the Director pursuant to Paragraph 4.2.5 hereof, shall be added to this Agreement as new exhibits (i.e., Exhibit "A-2," Exhibit "A-3," and so forth) in order to supplement the general descriptions, depictions and/or configurations of the Land and its respective Phases provided in Exhibit "A" and Exhibit "A-1" attached hereto.

4.1.2 Developer shall not have any right to develop, construct, operate and/or manage any Facilities upon any Phase until such time as Developer has given the City a written Takedown Notice in respect of such Phase. Additionally, no Facilities shall be developed, constructed, operated and/or managed upon any Phase of the Land until such time as the plans for such Facilities have been approved by the City. In the event Developer allows the General Feasibility Period and the Entitlements Period in respect of the First Phase to expire without terminating this Agreement in accordance with the terms and provisions of this Agreement, the same shall constitute a covenant on the part of Developer, enforceable by the City through the exercise of all available legal and equitable means, to construct the applicable Facilities within the First Phase (including the Minimum Required Services prescribed by Paragraph 6.1 hereof) and to achieve Substantial Completion of those Facilities, according to the approved Plans therefor, during the Construction Period for the First Phase. In the event Developer gives its Takedown Notice timely to the City in respect of the second or any subsequent Phase, and then, subsequently, allows the General Feasibility Period and the Entitlements Period in respect of such Phase to expire without terminating this Agreement as to such Phase in accordance with the terms and provisions of this Agreement, the same shall constitute a covenant on the part of Developer, enforceable by the City through the exercise of all available legal and equitable means, to construct the applicable Facilities within such Phase and to achieve Substantial Completion of those Facilities, according to the approved Plans therefor, during the Construction Period for such Phase.

4.1.3 Notwithstanding the provisions of Paragraph 4.1.2 above, upon its execution of this Agreement, Developer shall be deemed to have exercised its right to lease the First Phase, subject to Developer's right to terminate this Agreement as contemplated in Paragraphs 4.2.6 and 4.3.4.

4.1.4 Each subsequent Phase (i.e., each of Phases 2, 3 and 4) taken down by Developer shall contain no fewer than 2.0 acres and shall be contiguous to the prior Phase(s) taken down by Developer, unless otherwise agreed to between both parties in writing.

4.1.5 In order to take down any of Phases 2, 3 and 4, Developer must give the City a written Takedown Notice in respect of such Phase, which, in order to be given timely, must be given in writing to the City no later than the third (3rd) annual anniversary date of the date on which the Facilities on the immediately preceding Phase were Substantially Completed. Providing the City with a Takedown Notice, and doing so timely, is the sole and exclusive manner by which Developer may exercise its right to take down subsequent Phases, the manner of exercise being exclusive and time being of the absolute essence. The failure of Developer to timely and properly exercise its right to lease any particular Phase as aforesaid shall be deemed an unconditional and irrevocable waiver by Developer of its right to lease such Phase and, if applicable, any subsequent Phases. Correspondingly, if Developer, having timely and properly exercised its right to lease a particular Phase, elects to terminate this Agreement in respect of such Phase pursuant to either Paragraph 4.2.6 or Paragraph 4.3.4 hereof, such termination shall be tantamount to Developer's election not to lease such Phase and, correspondingly, Developer's relinquishment and waiver of any right to lease all subsequent Phases, if any. Any Phase(s) for which Developer fails to timely and properly exercise its right to lease as provided for herein, and any Phase(s) in respect of which Developer shall have timely given to the City a Takedown Notice but in respect of which Developer shall have exercised its right to terminate this Agreement pursuant to either of Paragraphs 4.2.6 and 4.3.4 hereof, shall thereupon automatically, and without the need for any further action on the part of either party, be deemed to have been deleted from coverage under this Agreement, and, upon the request of either party, each of Exhibits "A" and "A-1," as and to the extent necessary or appropriate, will be conformed so as to reflect only that portion of the Land constituting the Project as finally constituted pursuant to a written amendment to this Agreement in a form mutually and reasonably acceptable to both the City and Developer.

4.1.6 The last Phase for which Developer timely and properly exercises its right to lease the Land, in the manner provided for in this Article IV, and in respect of which Developer fails to exercise its right to terminate this Agreement pursuant to either Paragraph 4.2.6 or Paragraph 4.3.4 hereof, shall be referred to as the "Final Phase." The parties acknowledge, however, that the First Phase may also be the Final Phase if Developer fails to timely and properly exercise its right to lease Phase 2 or if Developer timely and properly exercises its right to lease Phase 2 but then elects to terminate this Agreement as to Phase 2 pursuant to Paragraph 4.2.6 or Paragraph 4.3.4 hereof. The first day of the Operational Period for the Final Phase is referred to herein as the "Final Phase Rent Commencement Date."

4.1.7 Notwithstanding any of the preceding provisions of this Article IV which might produce a different result, no Takedown Notice with respect to any subsequent Phase (whether it be Phase 2, Phase 3 or Phase 4) shall be operative and effective unless it is in all events received on or before December 31, 2019.

4.2 General Feasibility Period

4.2.1 During the General Feasibility Period in respect of each Phase, the City grants to Developer, and Developer shall have, a right of entry upon the Development Area comprised of such Phase, for the consideration defined in Article VII, to conduct any and all inspections and examinations of such Development Area as Developer, at its sole risk and expense, and in its commercially reasonable discretion, deems necessary or advisable in order to evaluate to Developer's own and complete satisfaction such Development Area for development in accordance with the terms and provisions of this Agreement, including, subject to and in accordance with the provisions of Article XVI hereof, an environmental assessment of the Land. The General Feasibility Period does not include, however, the right to begin any construction activities, including site preparation. Notwithstanding the foregoing, during the General Feasibility Period relative to any Phase, Developer's right of entry on the Land is subject to City's use of the former Ground Transportation Staging Area ("GTSA"), which Developer hereby acknowledges is currently located on a portion of or adjacent to the Land, as a temporary cell phone lot; provided, however, that if the City is in fact using the former GTSA as a temporary cell phone lot within the First Phase during the First Phase General Feasibility Period, then Developer's obligation to pay the General Feasibility Ground Rental for the First Phase shall abate in accordance with the provisions of Article VII.

4.2.2 Developer shall repair any material damage done to any portion of the Land, and improvements thereon, if any, resulting from inspections and examinations conducted by Developer, or on behalf of Developer.

4.2.3 **DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENCIES AND DEPARTMENTS, AND ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, INSURERS AND ATTORNEYS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, CONTROVERSIES, LAWSUITS, PROCEEDINGS, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY KIND OR CHARACTER, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, ASSOCIATED LEGAL EXPENSES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST, AS MAY BE INCURRED OR SUFFERED BY THE CITY OR ANY OF THE OTHER INDEMNIFIED PARTIES ARISING OUT OF, OR RELATING TO, ANY RIGHT OF ENTRY, INSPECTIONS OR OTHER EXAMINATIONS OF THE LAND UNDERTAKEN BY OR ON BEHALF OF DEVELOPER PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE IV**.

4.2.4 The obligations of Developer as expressed in Paragraphs 4.2.2 and 4.2.3 above survive, and are thus enforceable by the City through the exercise of all legal and equitable available means, following any termination, in whole or in part, of this Agreement.

4.2.5 Developer, at its sole cost and expense, shall cause to be prepared, for each of the parties' review and approval, a current plat of survey (accompanied by a metes and bounds perimeter description) prepared by a Texas registered professional land surveyor mutually and reasonably acceptable to both Developer and the City ("Survey"): (a) for the First Phase within thirty (30) days following the Effective Date of this Agreement; and (b) for each subsequent Phase taken down by Developer hereunder within thirty (30) days following Developer's delivery to the City of the Takedown Notice for such subsequent Phase. Upon the Director's approval of the Survey for each

applicable Phase of the Land, such Survey shall be designated and sequentially lettered and numbered as an additional exhibit (i.e., Exhibit "A-2," Exhibit "A-3," and so forth) and shall thereupon become a part of this Agreement.

4.2.6 During the General Feasibility Period relative to each Phase, Developer, at its sole cost and expense, shall undertake its good faith and commercially reasonable efforts in order to evaluate such Phase and determine whether the same will be suitable in all respects for Developer's intended development purposes. If, during the course of the General Feasibility Period for any particular Phase, Developer determines, in its sole and absolute discretion, and for any reason or no reason, that such Phase is not suitable for development in all respects in accordance with Developer's intended purposes, then, for and in consideration of the General Feasibility Ground Rental payable by Developer in respect of such Phase, Developer shall have the right to terminate this Agreement, as to that particular Phase only (and not as to any Phases previously taken down), by giving written notice of such termination to the City on or prior to the expiration of the General Feasibility Period for the applicable Phase. Notwithstanding the foregoing, in the event Developer exercises its right to terminate this Agreement as aforesaid during the General Feasibility Period applicable to the First Phase, this Agreement shall thereupon terminate in its entirety and be of no further force or effect.

4.2.7 If, in accordance with the provisions of Paragraph 4.2.6 above, Developer fails to exercise its right to terminate this Agreement by giving written notice of such termination to the City on or prior to the expiration of the General Feasibility Period for the applicable Phase, then Developer shall be deemed to have unconditionally and irrevocably waived its right to terminate this Agreement pursuant to the aforementioned Paragraph 4.2.6 hereof and to have determined to its own and complete satisfaction that the applicable Phase is suitable in all respects for Developer's intended development purposes, whereupon this Agreement, subject to and in accordance with the other terms and provisions hereof, shall continue in respect of the applicable Phase (and, if applicable, all prior Phases).

4.3 Entitlements Period

4.3.1 During the Entitlements Period in respect of each Phase, Developer shall submit to the City, for its review and approval, Developer's proposed design, plans and specifications for such Phase no later than two hundred and seventy days (270) days following the expiration of the General Feasibility Period in respect of such Phase. With regard to the First Phase, and the First Phase only, Developer's design, plans and specifications shall include, at a minimum, the Cell Phone Lot, including plans for visual access to the Multiple User Flight Information Display System ("MUFIDS"), Public Restrooms and Playground, as those terms are described in Article VI. Once so approved by the City, such design, plans and specifications for the applicable Facilities shall be known and referred to as the "Plans" for such Facilities.

4.3.2 Additionally, during the Entitlements Period relative to each Phase, Developer, at its sole risk and expense, shall employ its good faith and commercially reasonable efforts toward the pursuit of and securing:

4.3.2.1 All Approvals, as defined in Paragraph 5.8.1, including the City's approval of Developer's proposed design, plans and specifications, deemed necessary or desirable by Developer for the development and construction of the Facilities for such Phase; and

4.3.2.2 One or more acquisition, construction and/or permanent financing commitments (whether individually, together or collectively, "Financing") satisfactory to Developer, in its sole discretion, in order to facilitate Developer's acquisition, development and construction of the Facilities on such Phase (the Approvals and Developer's Financing being collectively herein called the "Entitlements"). Developer shall be responsible for financing the entire cost associated with the development and construction of the Facilities for each Phase, including, but not limited to, predevelopment costs of design, engineering, environmental and other studies, and all construction costs, including infrastructure, off-site improvements and utilities.

4.3.3 Developer acknowledges that there remain in operation several United States Air Force ground water monitoring wells (the "Monitoring Wells") in various locations upon the Land and care must be taken not to disturb those Monitoring Wells. Notwithstanding the foregoing, the City has obtained approval from the United States Air Force to cap or relocate the Monitoring Wells located on the Land that are impacted by the applicable Phase(s). Accordingly, Developer shall coordinate relocation or capping of the applicable Monitoring Well(s) with

the City and the United States Air Force, and the cost of any such capping or relocation shall be the sole responsibility of and paid by Developer.

4.3.4 During the Entitlements Period relative to each Phase, Developer, at its sole cost and expense, shall undertake its good faith and commercially reasonable efforts in order to apply for, seek and actually obtain the Entitlements for such Phase, in the process complying with all applicable Regulations. If, during the course of the Entitlements Period for any particular Phase, Developer is unable to obtain the Entitlements for such Phase, then, for and in consideration of the Entitlements Period Ground Rental payable by Developer in respect of such Phase, Developer shall have the right to terminate this Agreement, as to that particular Phase only (and not as to any Phases previously taken down), by giving written notice of such termination to the City on or prior to the expiration of the Entitlements Period for the applicable Phase. Notwithstanding the foregoing, in the event Developer exercises its right to terminate this Agreement as aforesaid during the Entitlements Period applicable to the First Phase, this Agreement shall thereupon terminate in its entirety and be of no further force or effect.

4.3.5 If, in accordance with the provisions of Paragraph 4.3.4 above, Developer fails to exercise its right to terminate this Agreement by giving written notice of such termination to the City on or prior to the expiration of the Entitlements Period for the applicable Phase, then Developer shall be deemed to have unconditionally and irrevocably waived its right to terminate this Agreement pursuant to the aforementioned Paragraph 4.3.4 hereof and to have either obtained all Entitlements or determined to Developer's own and complete satisfaction that it will, in fact, be able to obtain all such Entitlements in respect of that particular Phase, whereupon this Agreement, subject to and in accordance with the terms and provisions hereof, shall continue in respect of the applicable Phase (and, if applicable, all prior Phases).

4.4 Market Research. No later than the date on which the Facilities of the First Phase are Substantially Complete, Developer, at its sole cost, will be responsible for conducting all market research to determine the highest and best use of the Land based on the market demographics of the trade area, and shall design, develop, construct, operate and manage the Facilities based on, and pursuant to the terms of, this Agreement.

ARTICLE V. DESIGN AND CONSTRUCTION OF THE PREMISES

5.1 Design Criteria and Development Values. Subject to the terms and conditions set forth in this Agreement, Developer shall, during the Entitlements Period relative to each Phase, plan and design the Facilities to be developed and constructed on such Phase, and, during the Construction Period for such Phase, shall develop, construct, complete and make operational those Facilities, in accordance with the following development values and design criteria:

5.1.1 Developer shall create a "destination" development with a distinct sense of place, utilizing market and site-appropriate design components such as landscaping, gathering areas, circulation, architectural design, materials, lighting, density, and an overall pedestrian-oriented philosophy.

5.1.2 Developer shall design all aspects of the Project with due consideration for traffic flow that will effectively and seamlessly integrate into the Airport's existing road system, which shall adhere to all Regulations, and site access and create a pedestrian-oriented environment to realize development potential.

5.1.3 All curb cuts and access ways or points shall address impact on traffic safety and flow and turn out lanes as necessary.

5.1.4 The design shall take into consideration the current technology and equipment for each type of service being proposed.

5.1.5 Developer acknowledges the City's vision for a vibrant, first class Facility. Accordingly, Developer agrees the Facility shall utilize a first class, market-appropriate level of design quality while adhering to the Airport Design Review Policies and Procedures and the policies contained therein. The Director reserves the right to review and approve all improvements and alterations to the Facilities, which, like the Facilities as initially constructed, shall conform to all applicable Airport Design Review Policies and Procedures.

5.1.6 Developer must promote and support ABIA branding and architectural design compliance in cooperation with the City.

5.1.7 The quality of materials and finishes will be agreed upon by the parties and shall be in compliance with the Airport Design Review Policies and Procedures as determined by the City.

5.1.8 Developer shall coordinate design criteria with the City, and must secure City approval of all plans, drawings and specifications and applicable City permits for final design.

5.1.9 Developer shall design and use green infrastructure to protect environmentally sensitive areas and integrate nature in the Project consistent with City Regulations and Airport policies.

5.2 Development and Construction of the Premises. Subject to the terms and conditions set forth in this Agreement, Developer, at its sole cost and expense, shall develop, construct, complete and make operational the Facilities for each Phase during the Construction Period of such Phase in accordance with the following:

5.2.1 Subject to Paragraph 5.9, Developer shall extend all necessary or desired utilities to the Development Area of each Phase and relocate, to the extent necessary, any existing utility lines or other utility-related facilities on or under the Land if required in connection with design, development and construction of the Facilities.

5.2.2 Developer shall be responsible for any necessary upgrade of Airport roadways, including, without limitation, Spirit of Texas Drive and Hotel Drive, as needed and reasonably determined by the City, in order to serve the development and operation of the Facilities in accordance with all applicable Regulations and the terms of this Agreement.

5.2.3 Subject to Developer's participation in the Regional Storm Water Management Program as described under Paragraph 17.8 of this Agreement, Developer shall design, construct, operate and maintain any and all storm water detention, sedimentation and other water quality ponds and other storm water drainage facilities as needed in order to accommodate the development and operation of the Facilities in accordance with all applicable Regulations and the terms of this Agreement.

5.2.4 At the expiration of the Entitlements Period for the First Phase, Developer shall, at its sole cost and expense, demolish the restroom facilities and shelter facility area which presently serve the former GTSA.

5.2.5 The Facilities shall be constructed in a good and workmanlike manner, utilizing good industry practices for the type of work in question, and in compliance with all applicable Regulations, including applicable building codes and all policies and procedures set forth in the Airport Design Review Policies and Procedures, other applicable Airport rules and regulations, Federal Aviation Regulations governing the height and location of structures affecting airspace at the Airport as set forth in 14 CFR Part 77, and the Code of the City of Austin, Texas (the "City Code") Chapter 25-13 (Airport Hazard and Compatible Land Use Regulations).

5.2.6 Developer shall ensure that all plans, drawings and specifications, preliminary and final, shall be prepared by qualified, registered architects or engineers licensed to practice in the State of Texas (collectively, "Design Consultants"). Upon the request of the City, Developer shall disclose to the City the identity and contact information for all of Developer's Design Consultants.

5.2.7 For each building constructed on the Premises, Developer shall meet or exceed the requirements of the Austin Energy Green Building Program Two Star Rating and the United States Green Building Council Leadership in Energy and Environmental Design Silver Building Rating System certified design approach, and incorporate a commitment to sustainability in its design of the Facilities. Design alternatives should be analyzed in terms of life benefits and lifecycle costs, including: protection and enhancement of natural systems, potential for adaptive reuse, durability of building materials, efficiency of water and energy use, reduction in runoff pollutant, loading and volume, wind and solar alternative energy, and reduction of indoor environmental hazards that may affect human health, comfort and performance.

5.2.8 Developer shall be responsible for the planning, design, engineering, development and construction of the Facilities, including performing any necessary studies, assessments or investigations.

5.2.9 Developer shall construct all necessary improvements, including, but not limited to, streetscapes, utilities and roads, building cores and shells, tenant improvements, fixtures, and equipment, and all on-site landscaping, which shall incorporate green infrastructure consistent with City Regulations and Airport policies.

5.2.10 Developer shall landscape the grounds in the Development Area of each Phase in accordance with the Airport Design Review Policies and Procedures, preserving and/or planting as many trees as possible, in a manner to make the grounds and Premises safe, attractive and presentable to the traveling public.

5.2.11 After commencement, the construction of each Phase of the Project, including the required infrastructure construction, shall be prosecuted with due diligence and completed by the expiration of the Construction Period for that particular Phase. Construction of all Facilities comprising the Project shall be performed and prosecuted in accordance with the approved Plans for such Facilities.

5.2.12 During construction of each Phase of the Project, Developer shall keep the Premises and any construction staging area clean and free from any type of obstruction, dust or debris. Developer shall cause any construction staging area to be located only in an area mutually and reasonably approved by Developer and the City. Developer, at its sole cost and expense, shall be responsible for implementing (or causing to be implemented): (1) commercially reasonable construction techniques and procedures suitable for a densely populated area in order to minimize the impact on the operations at the Airport from the deleterious effects of construction during each Phase of the Project; (2) lawful and appropriate safety procedures intended, designed and implemented to protect the tenants and customers of the Airport while any such construction work is in progress; and (3) commercially reasonable efforts to keep the areas close to the portions of the Project then under construction clean and free from any types of obstructions, dust or debris to the extent reasonably practicable.

5.3 Architect and Engineers

5.3.1 Subject to Article XV, Developer shall have all authority, control and rights in selecting (including the procedures or methods of procurement and selection), terminating and replacing such design professionals as are reasonably required for the design of the Facilities, including an architect, or multiple architects (whether one or more than one, the "Architect"), who shall have the primary responsibilities for the architectural design of the Facilities for each Phase.

5.3.2 Developer shall require in its contracts with the Architect or structural engineer (if Developer contracts directly with such structural engineer) that the structural elements of the Facilities be engineered in accordance with all applicable Regulations and engineered at a standard for an estimated useful life of the structural elements of not less than forty (40) years.

5.3.3 Each Architect and structural engineer with whom Developer contracts shall: (i) indemnify the City, which shall include commitments to defend and hold harmless, and shall be consistent with the indemnification provisions customarily provided by architectural and engineering consultants for City operated construction projects with a scope similar to that of the Project; and (ii) maintain professional liability insurance with coverages and coverage limits reasonably acceptable to the City.

5.4 General Contractor

5.4.1 Subject to Article XV, Developer shall have exclusive authority, control and rights in selecting (including the procedures or methods of procurement and selection), terminating and replacing the general contractor(s) (whether one or more than one, the "General Contractor") for each Phase.

5.4.2 Developer, at its sole cost and expense, shall contractually obligate the General Contractor for each Phase to:

5.4.2.1 Provide performance and payment bonds in the forms of those attached hereto respectively as Exhibit "E" and Exhibit "F" (or other forms acceptable to the City) naming Developer and the City as dual obligees. Said bonds shall be maintained and kept in full force and effect for one (1) year after Substantial Completion of each completed Phase. The bonds shall be issued by a surety licensed to transact business in the State of Texas acceptable to the City. The bonds shall be in a penal amount equal to the full amount of all contract(s) required for the construction of the Facilities. The performance bond shall be for the protection of the City, and must ensure the full faithful and timely performance by the General Contractor of its obligations to construct the Facilities in accordance with the plans and specifications therefor, and all applicable contract documents. The payment bond shall guarantee the prompt payment by Developer and General Contractor to all persons and firms supplying labor, materials (including specially-fabricated materials), provisions, supplies and equipment used directly or indirectly by any Subcontractor, materialman and/or supplier in the construction of the Facilities, and shall protect the City from any and all liability, losses, costs, expenses or damages arising therefrom.

5.4.2.2 Indemnify the City, which shall include commitments to defend and hold harmless, and shall be consistent with indemnification provisions customarily provided by prime contractors for City operated construction projects with a scope similar to that of the Project; and

5.4.2.3 Maintain adequate insurance, including commercial liability, all-risks builders risk, workers compensation, auto liability and excess umbrella coverage, each in form and substance as required in Article XIII of this Agreement. Each such indemnity and insurance policy shall name both the City and Developer as joint indemnitees and as additional insureds, as the case may be. The City shall receive thirty (30) days' advance written notice of the cancellation of any of the General Contractor's policies. The Director may from time to time reasonably request in writing that Developer furnish to the City evidence of the insurance provided by the General Contractor.

5.5 Construction Contracts. Developer shall have the sole right and responsibility to negotiate and enter into all contracts necessary for the design, engineering, development, construction and completion of the Facilities containing such terms and provisions as agreed by Developer, subject to such requirements as provided in this Agreement and prior written approval of each contract by the Director. The City shall be named a third party beneficiary of each construction contract to which Developer is a party.

5.6 Construction Management. Developer shall appoint a construction project superintendent that will maintain a presence on the Development Area(s) throughout each Phase(s). Developer shall appoint a project manager responsible for the construction and communication with the City and the Director and their authorized representatives. The project manager will not be required to maintain a presence on the Development Area(s) during construction upon any Phase(s), but such project manager shall be readily available to the City and the Director, and their respective authorized representatives, seven (7) days a week while construction is progressing, immediately contactable by mobile phone and email at a phone number and email address to at all times be maintained current with the City and the Director.

5.7 Regulations and Other Laws. Developer shall be responsible for meeting, or requiring to be met through its contracts with its Design Consultants, General Contractor and Subcontractors, all Regulations (including, without limitation, all Environmental Laws) and requirements of law applicable to the construction of improvements on privately owned real property in the State of Texas, including, without limitation, if applicable, (i) United States Occupational Safety and Health Administration requirements, (ii) Americans with Disabilities Act requirements, (iii) requirements under Title VI of the Civil Rights Act of 1964, as amended, (iv) Age Discrimination in Employment Act requirements, (v) building codes and zoning requirements, and (vi) storm water, street, utility and related requirements.

5.8 Permits and Licenses

5.8.1 Developer shall obtain, or cause to be obtained through contracts with the Architect or General Contractor, all federal, state and local permits, authorizations, licenses and approvals, including, without limitation, any FAA and federal and state environmental permits and approvals, and all required FAA notices for proposed construction or alteration (collectively, "Approvals"), for the development of the Project and the construction of all Facilities on the Land, including, but not limited to, all improvements comprising the Cell Phone Lot, the Public

Restrooms and Playground to be developed and constructed within the First Phase, as each of these terms are hereinafter described and provided for.

5.8.2 Developer shall be responsible for the costs and expenses incurred in obtaining all such Approvals, including, without limitation, all application or permit fees. Developer acknowledges that there are no City or Airport incentives available for the development of the Project and/or the construction of the Facilities which are to comprise the Project.

5.8.3 Notwithstanding the foregoing, the City agrees to provide its reasonable cooperation and assistance to Developer in obtaining the Approvals, including all necessary Approvals from the FAA, and to support all applications of Developer for Approvals so long as the same are consistent with the Plans for the Facilities approved by the City and/or are otherwise consistent with the terms of this Agreement. If Developer is not successful in obtaining any required Approval(s) from the FAA within six (6) weeks after Developer's submission to the FAA of a complete application for such Approval(s), then provided that such application is complete and contains all relevant documentation and information required by the FAA in support of such application and the City is concurrently provided true, correct and complete copies of such application and all supporting documentation and information, all Entitlements Period Ground Rental otherwise payable under this Agreement in respect of such Phase shall thereafter abate until the earlier to occur of (i) the date upon which FAA approval is obtained or (ii) the conclusion of the Entitlements Period for the applicable Phase.

5.9 Utilities

5.9.1 The cost to design, obtain and connect to any/all utilities, including, but not limited to, natural gas, electricity, light, heat, air conditioning, power, water, wastewater and drainage and communication services, necessary for the operation of the Project will be at the sole cost of Developer. All costs, including, but not limited to, deposits, installation and extension costs, connection and inspection fees, and all costs of utilities consumed or utility services provided, shall be paid for by Developer to the appropriate utility provider.

5.9.2 All utilities must be separately metered and installed within the boundary line of the Land so that Developer or its Sublessees are paying for usage of any utilities by Developer or its Sublessees. Meters must be installed at Developer's expense so that they are readily accessible in order to obtain routine readings.

5.9.3 Developer shall be responsible for the payment of all utilities consumed on the Premises, and all fees and charges for utilities and similar services rendered or supplied to the Premises, including, but not limited to, the Regional Storm Water Management Program, at any point during the Term of this Agreement. Notwithstanding the foregoing, the First Phase shall be designed and constructed such that utilities associated with the operation of the Cell Phone Lot, including parking lot lighting and restroom facilities, and the MUFIDS shall be separately metered and the cost of utilities consumed by reason of the use and operation of the Cell Phone Lot, Playground, and the MUFIDS shall be billed directly to the City for payment.

5.9.4 Developer shall be solely responsible for the payment of all water, wastewater and storm water impact fees, if any, in connection with the Project.

5.9.5 Developer, at its sole cost, shall construct and install the requisite utility infrastructure in order to adequately serve the Project, which infrastructure shall be designed and constructed in a manner so as to minimize future inconvenience as Facilities are developed and constructed in subsequent Phases.

5.10 Title to the Facilities. All improvements of any kind or character whatsoever constructed or placed on the Land by Developer or Sublessees that are not Removable Fixtures, and all alterations, modifications and enlargements thereof, shall become part of the Facilities and unencumbered title to all such Facilities shall vest in the City immediately upon the expiration or early termination of this Agreement.

ARTICLE VI. SERVICES AND OPERATIONS

6.1 Minimum Required Services. The parties acknowledge that the Airport, including the Land, is presently zoned "AV," and is further subject to the restrictions set forth in City Code Chapter 25-13 and Title 14 CFR Part 77

(collectively, along with all other applicable federal, state and/or local laws, statutes, ordinances, rules, regulations, policies, codes and guidelines, the "Land Use Restrictions"). To the extent permitted by the Land Use Restrictions, the Land may be utilized for such retail and reasonably complementary commercial uses as Developer may determine. However, Developer shall, within the First Phase, construct the following improvements as part of the Phase 1 Facilities (collectively, the "Minimum Required Services"):

6.1.1 Service Station

6.1.1.1 A service station, which shall provide a gasoline brand that is reasonably familiar to a majority of the traveling public and shall denote the high quality of fuels and products associated with a premium or nationally recognized company (the "Service Station"). The final choice as to the gasoline brand will be selected by Developer from a listing which has been prepared or otherwise provided by the City and preapproved by the Director.

6.1.1.2 The Service Station shall provide automotive fuel that includes, at a minimum, regular, mid-grade and high grade gasoline and diesel fuels.

6.1.1.3 Fuel prices shall not exceed five percent (5%) above the Daily Fuel Gauge Report published by AAA for the Austin Metropolitan Area, or, if such is no longer published, a similar local standard reasonably approved by the City.

6.1.1.4 The Service Station shall accept, in addition to cash, at least three (3) major credit cards and debit cards, along with "pay-at-the-pump" capability.

6.1.1.5 Each gasoline pump shall have a pump-to-attendant intercom/communication system and/or other technology that will enhance customer service.

6.1.1.6 Developer may offer a fuel discount to its employees or those of its Sublessees or of any of the City's tenants at the Airport, and to volume purchasers; provided, however, such discounts shall not exceed three percent (3%). Discounts to employees of tenants at the Airport must be offered on an equal and nondiscriminatory basis. The eligibility requirements for discounts shall be submitted to the City for prior approval. Records of discounts approved by the City shall be kept and maintained in accordance with Paragraph 7.7. All final sales price paid by customers shall be price recorded in Service Station's accounting system.

6.1.2 Convenience Store

6.1.2.1 A convenience store, which shall be a typical convenience store that sells snacks, fountain and/or packaged beverages, pre-packaged foods, personal care items such as deodorant and feminine protection, plastic-ware and paper plates, cigarettes, newspapers/periodicals and any other items typically associated with a typical convenience store (the "Convenience Store"). The Convenience Store may be associated with the Service Station or a "stand-alone" store; provided, however, if the Convenience Store is not associated with the Service Station, the final choice as to the concept of the Convenience Store will be selected by Developer from a listing which has been preapproved by the Director.

6.1.2.2 The Convenience Store may include beer and wine sold for off-site consumption only. Beer may be sold in individual cans and/or bottles, but Developer shall do nothing to particularly promote single size sales, including preferential display locations. Applications and associated fees and charges for required permits, including, but not limited to, any required permits from the Texas Alcoholic Beverage Commission ("TABC"), are the sole responsibility of Developer.

6.1.2.3 The Convenience Store shall (i) ensure every customer is offered a receipt of purchase; and (ii) accept at least three (3) major credit cards and debit cards for payment, in addition to cash.

6.1.3 Restaurant

6.1.3.1 A restaurant (the "Restaurant"), which, as determined by the Director in his sole discretion, shall be either: (i) a fast food concept that offers items for breakfast, lunch and dinner with convenient "express" packaging and drive-through service; or (ii) a casual dining concept offering counter or cafeteria style service, along with "to go" service and/or a bakery counter. The Restaurant may, but need not, be a so-called "sports-bar," including, as the case may be, any operation principally functioning as a restaurant but with a "sports-bar" theme (merely for subsequent convenience of reference herein, a "Sports Bar"). The Restaurant (including, as the case may be, one operating in whole or in part as a Sports Bar) shall have its own separate and distinct area within Phase 1 and be given an identity that separates it from the general products offered by the Convenience Store.

6.1.3.2 The Restaurant (including, as the case may be, one operating in whole or in part as a Sports Bar) may sell alcoholic beverages available for on-site consumption. Applications and associated fees and charges for required permits, including, without limitation, any required permits from the TABC, are the sole responsibility of Developer.

6.1.3.3 The Restaurant (including, as the case may be, one operating in whole or in part as a Sports Bar) shall (i) ensure every customer is offered a receipt of purchase; and (ii) accept at least three (3) major credit cards and debit cards for payment, in addition to cash.

6.1.3.4 The final choice as to the concept for the Restaurant (including, as the case may be, one operating in whole or in part as a Sports Bar) shall be selected by Developer from the listing set forth on Exhibit "C" which has been prepared or otherwise provided by the City and preapproved by the Director.

6.1.4 Cell Phone Lot

6.1.4.1 The First Phase shall include a parking lot containing approximately seventeen thousand five hundred (17,500) square feet of gross land area with a minimum of fifty (50) nine-foot by eighteen-foot (9' x 18') parking spaces for persons who are awaiting Airport passengers without charge, along with no fewer than two (2) charging stations for electric powered vehicles (the "Cell Phone Lot"). The overall size of the Cell Phone Lot, configuration of the parking spaces within the Cell Phone Lot, including associated drive aisles, and the number and location of the charging stations for electric vehicles, shall be determined according to a site plan mutually approved by Developer and the City during the Entitlements Period for the First Phase, which approved site plan shall be incorporated as a part of the approved Plans for such Phase.

6.1.4.2 The Cell Phone Lot shall include visual access to the MUFIDS to accommodate parties awaiting the arrival of Airport passengers or, as the case may be, the drop-off of departing Airport passengers. The capital cost incurred in both designing and constructing the necessary improvements for installation of the MUFIDS, including associated equipment, shall be borne by the City. At the City's option, Developer shall be responsible for the installation of the MUFIDS, provided that Developer shall not incur any costs associated with the installation of the MUFIDS without the City's prior written approval of the equipment, design and construction costs. Developer, at its sole cost and expense, must coordinate with the Department's Information Systems to determine the parameters necessary for supplying the MUFIDS device. Once installed and operational, the City shall be responsible for maintaining the MUFIDS within the Cell Phone Lot.

6.1.4.3 In no event shall Developer or its Sublessees (or their respective employees) have the right to park in the Cell Phone Lot. Correspondingly, without Developer's consent, the City shall not utilize the Cell Phone Lot for any purpose other than to allow persons meeting travelers arriving at the Airport (or those preparing to drop travelers off at the Airport) to use the same as contemplated by this paragraph and for the operation and maintenance of the MUFIDS.

6.1.4.4 The parking spaces within the Cell Phone Lot shall be used solely on a short-term, temporary basis by persons awaiting travelers at the Airport or, as the case may be, those preparing to drop travelers off at the Airport. In no event shall the parking spaces within the Cell Phone Lot be used by persons who are traveling or on a long-term or overnight basis. Developer shall enforce, at its sole cost and expense, the use of the Cell Phone Lot with appropriate parking enforcement procedures, including, but not limited to, posting of signs notifying persons of unauthorized parking and towing of vehicles and hiring of employees and/or contractors for such parking enforcement. The City reserves the right to impose parking duration limits with respect to the parking

spaces within the Cell Phone Lot and to monitor the use of the Cell Phone Lot to ensure Developer is enforcing the rules with respect to the use thereof.

6.1.5 Public Restrooms

6.1.5.1 Separate from the Cell Phone Lot, but in a location within the First Phase mutually approved by Developer and the City during the Entitlements Period for the First Phase, Developer shall construct associated public restroom facilities for use by those meeting travelers arriving at the Airport (or, as the case may be, those preparing to drop travelers off at the Airport) while they are parked in the parking spaces comprising the Cell Phone Lot (the "Public Restrooms"). The Public Restrooms shall have separate facilities for men and women and shall adhere to all applicable Regulations, including, without limitation, the Americans with Disabilities Act, and the terms of this Agreement. The requirements and specifications of the Public Restrooms shall be specifically set out by the City.

6.1.5.2 In no event shall the City utilize the Public Restrooms for any purpose other than as public restrooms in conjunction with the Cell Phone Lot and the Playground, as defined in Paragraph 6.1.6 below.

6.1.6 Playground

6.1.6.1 Within the First Phase shall be a tract of land which shall be developed as a playground where persons with children who are meeting travelers arriving at the Airport (or, as the case may be, those with children who are preparing to drop departing travelers off at the Airport) may wait and use the facilities thereon for their enjoyment, without charge, until their passenger's flight arrives (the "Playground").

6.1.6.2 The size, location and design of the Playground shall be mutually approved by Developer and City during the Entitlements Period for the First Phase. The final choice as to the Playground concept shall be selected by Developer from a listing which has been preapproved by the Director.

6.1.6.3 Developer, at its sole cost and expense, shall, construct, keep and maintain the Playground and every part thereof in good order and repair and in a safe condition consistent with the standards utilized at the Airport at all times during the Term of this Agreement. This obligation shall include and encompass replacements as needed, from time to time, which such replacements shall be of a quality substantially equal to, or exceeding, the original in materials and workmanship.

6.1.6.4 **DEVELOPER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY PARTIES HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, ASSOCIATED LEGAL EXPENSES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH, OR INCIDENTAL TO, THE CONSTRUCTION, MAINTENANCE AND USE OF THE PLAYGROUND.**

6.1.7 Personnel and Customer Service

6.1.7.1 In the operation of the Facilities, Developer and Sublessees shall employ such personnel as will assure a high standard of customer service to the public. All personnel shall be clean, neat in appearance, uniformly attired, and courteous at all times. No person employed by Developer or Sublessees shall use foul or vulgar language; act in a loud, boisterous, or otherwise improper manner; be permitted to solicit business in a manner that is offensive or otherwise unprofessional; or possess or use alcoholic beverages or any controlled substance. Developer and/or Sublessees shall provide its/their employees customer service training on an annual basis.

6.1.7.2 Developer and Sublessees shall maintain close supervision over its/their agents, contractors and employees to ensure the maintenance of a high standard of service to the public and compliance with this Agreement. The satisfactory performance of the obligation hereunder shall be determined at the reasonable

discretion of the Director. Developer and Sublessees shall take proper steps to discipline employees who participate in acts of misconduct on or about the Premises, subject to labor contracts, if any, and applicable law.

6.1.7.3 City may conduct customer satisfaction surveys to determine if Developer and/or Sublessees is/are meeting the needs and expectations of the customers or public and to identify operational improvements to maximize profitability and customer service. Developer shall participate in and cooperate with the City in conducting the customer satisfaction surveys. City shall notify Developer of the results of such survey. Developer and Sublessees shall implement any operational changes indicated in the surveys as directed by the City.

6.2 Prohibited Uses and Services. Developer shall not permit any of the uses set forth in Exhibit "D" (the "Prohibited Uses") to be conducted on the Land, nor will Developer allow any portion of the Land to be used for any purpose which conflicts with the Land Use Restrictions. Developer, its Contractors and Sublessees, and their respective agents, employees, representatives, successors and assigns, are prohibited from offering any services or facilities relating to fee based parking, rental car and/or fee based shared ride on the Land. Developer acknowledges that the Land is located between two (2) active Airport runways, and Developer shall not use the Land in a manner that interferes with the landing and taking off of aircraft. Developer acknowledges that the Airport's purpose is primarily that of accommodating civil aviation, and, as such, the right of Developer and/or any of its Sublessees, to use the Land for non-aviation purposes in this Article VI is subordinate to, and must not interfere with, the primary purpose of the Airport.

6.3 Non-Exclusivity.

6.3.1 The rights granted in this Agreement for the permitted uses within the Land are not exclusive within the Airport. The City may, at any time, enter into leases elsewhere at the Airport to develop hotels, retail, and food and beverage establishments, and any other business enterprise that competes with enterprises permitted by this Agreement. Furthermore, the Developer shall not grant any exclusive sublease agreements and allow any concession category to be operated exclusively by one concessionaire.

6.3.2 Notwithstanding the provisions of Paragraph 6.3.1 above, for a period of ten (10) years following the date on which the Service Station first opens for business within the First Phase, and for so long during such ten (10) year period as such use continues in operation in the First Phase, subject to closures for commercially reasonable periods of time in order to facilitate remodelings, or as the result of a casualty or condemnation event, the City shall not lease or otherwise permit the use of that area identified as the Restricted Area on Exhibit "B" attached hereto (the "Restricted Area") for use in the sale of gasoline for motor vehicles. The foregoing restriction, however, shall not preclude the City from devoting a portion of the Restricted Area to a facility or facilities for the provision of gasoline or other fuels solely to support the City's own vehicles, including, without limitation, aircraft, or from using the Restricted Area for any other use as the City determines necessary for aviation purposes or the operation of the Airport, provided that such facility or facilities do not provide or sell gasoline to the general public.

6.4 Signage

6.4.1 Developer may install, at its sole cost and expense, such temporary advertising and identification signs, as may be commercially reasonable and necessary, upon the Development Area of each Phase while the same is under construction. Signs advertising businesses or services that are not currently or soon to be located on the Premises, or that could be defined as "off premises" signs are not permitted on the Land. The terms "sign" or "signs" as used in herein shall mean advertising materials, billboards, notices, identification symbols, posters, displays, information racks, decals, logos, or any similar devices.

6.4.2 Developer shall construct and install, at its sole cost and expense, temporary signs identifying the availability of the Cell Phone Lot off of Spirit of Texas Drive and Presidential Boulevard. Permanent signs identifying the availability of Cell Phone Lot shall be constructed and installed, at Developer's expense, at locations determined by the City during the design phase of Phase 1.

6.4.3 Developer may construct and install pylon signs identifying the Premises off of State Highway 71, at its sole cost and expense. The City shall, at no expense to the City, provide reasonable support towards

Developer's efforts to obtain such pylon signs, but the City shall have no responsibility for the pursuit thereof, or for the payment or reimbursement of any fees or other expenses associated therewith, and the City hereby makes no guarantee, representation or warranty that such pylon signage is in fact obtainable.

6.4.4 All signs, whether in the nature of building signage or otherwise, including leasing signage, erected by Developer within the boundaries of the Airport shall comply with all Regulations, including, without limitation, the City Code, Texas state law, and any applicable Airport design and construction standards and approvals as the same may be created or amended, from time to time. At Developer's request, the City may consider a Premise-specific site signage plan designed to create a theme and destination for the Premises, which, subject to the City's approval, may differ from the Airport's campus signage plan and/or design and construction standards, provided that all costs and expenses associated with the development, construction, installation and maintenance of any such Premise-specific site signage shall be solely the responsibility of Developer.

6.4.5 Except as otherwise expressly authorized pursuant to the above and foregoing terms and provisions of this Article VI, Developer shall not construct, erect, or place any signs of any nature or duration anywhere on Airport property without the prior written consent of the Director.

6.4.6 Developer, at its sole cost and expense, shall maintain all signs installed by Developer, regardless of location, in good order, condition and repair at all times, including replacements thereto, as needed from time to time.

6.5 Property Manager. Developer shall at all times during the Term of this Agreement retain a qualified, competent and experienced property manager (the "Property Manager") who shall serve as the primary spokesperson for and shall have the authority to manage the daily operations of the Facilities on behalf of Developer, and its Sublessees, and who shall be the point of contact for the City. The Property Manager shall reside in the Austin area and be accessible to be contacted by the City at all times. A responsible subordinate shall have the authority to act on behalf of such Property Manager if for any reason the Property Manager is not available. Developer shall provide the Director with written notice within ten (10) days following the Phase 1 Occupancy Date advising the Director of the name, 24-hour answered telephone number and business address (including email address) of such Property Manager. Developer may elect to change the Property Manager from time to time so long as written notice of any such change is promptly provided to the City, which notice shall include all of the prescribed information for such new Property Manager as set forth in the preceding sentence.

6.6 Hours of Operation. When commercially reasonable and subject to any Sublessees' standard corporate business operating hours, Developer shall operate the Minimum Required Services during the hours of 5:00 A.M. - Midnight, seven (7) days per week, including holidays. The City acknowledges that each individual Sublessees' business hours of operation may vary; therefore, any hours that are materially shorter than those mentioned above shall require written authorization in advance by the Director or his authorized representative. Developer may, however, elect to temporarily operate the Premises for longer hours, or on a 24-hour basis, without the written consent of the Director. At no time shall the Premises or any portion thereof be left unattended or "temporarily closed" during business hours except as reasonably necessary during a Force Majeure event or as may otherwise be approved in writing by the Director. Director, at the Director's sole discretion, may modify the required business hours Developer must operate the Minimum Required Services with reasonable advance written notice to Developer.

6.7 Security, Adequate Exterior Lighting. Developer, at its sole cost and expense, is responsible for providing security within the First Phase, and, when and if developed by Developer, all subsequent Phases, that will provide for the safety of Developer and its Sublessees, and their respective employees, licensees and invitees. Developer shall install and operate adequate exterior lighting to illuminate certain exterior parts of the Development Area of each Phase between sundown and sunrise as approved by the City in the design of the Premises.

6.8 Operational Costs and Expenses. Developer shall be solely responsible for all costs, expenses and fees of any kind or character associated with, or arising from, the design, development, construction, operation and management of the Premises. Except as otherwise expressly provided in this Agreement, the City shall have no responsibility for any costs, expenses or fees relating to the operation of the Premises.

6.9 Demolition or Removal of Improvements. Save and except for demolition or removal of part or all of any improvement occasioned by a casualty, condemnation, or an alteration or replacement of, or addition to, the improvements on the Land, Developer shall not, without Director's prior written consent, remove or demolish the improvements comprising any of the Facilities situated on the Land during the Term of this Agreement.

ARTICLE VII. RENT

7.1 Ground Rental. Developer, for and in consideration of the rights and privileges granted herein, shall pay the City on or before the first day of each calendar month in advance, without demand, for each Phase taken down by Developer, 1/12 of the following annually computed amounts (collectively, "Ground Rentals"):

7.1.1 For and during the General Feasibility Period for the First Phase, and for and during the General Feasibility Period for each subsequent Phase as shall be taken down by Developer hereunder, Developer shall pay to the City the amount of two and one-half cents ($.025) per square foot per annum for each square foot of the Land contained within the Development Area of the applicable Phase (the "General Feasibility Ground Rental"); provided, however, the General Feasibility Ground Rental for Phase 1 shall not include the number of square feet of the Land comprising the Cell Phone Lot, the Public Restrooms and the Playground. Notwithstanding the foregoing, the General Feasibility Ground Rental for Phase 1 shall be due and payable solely for, and during, the General Feasibility Period for Phase 1 only if, and for so long as, the former GTSA is not then being used a temporary cell phone lot in Phase 1.

7.1.2 For and during the Entitlements Period for the First Phase, and for and during the Entitlements Period for each subsequent Phase as shall be taken down by Developer hereunder, Developer shall pay to City the amount of five cents ($0.05) per square foot per annum for each square foot of the Land contained within the Development Area of the applicable Phase (the "Entitlements Period Ground Rental"); provided, however, the Entitlements Period Ground Rental for Phase 1 shall not include the number of square feet of the Land comprising the Cell Phone Lot, the Public Restrooms and the Playground. Notwithstanding the foregoing, the Entitlements Period Ground Rental for Phase 1 shall be due and payable solely for, and during, the Entitlements Period for Phase 1 only if, and for so long as, the former GTSA is not then being used as a temporary cell phone lot in Phase 1.

7.1.3 For and during the Construction Period for the First Phase, and for and during the Construction Period for each subsequent Phase as shall be taken down by Developer hereunder, Developer shall pay to City the amount of fifteen cents ($0.15) per square foot per annum for each square foot of the Land contained within the Development Area of the applicable Phase (the "Construction Period Ground Rental"); provided, however, the Construction Period Ground Rental for Phase 1 shall not include the number of square feet of the Land comprising the Cell Phone Lot, the Public Restrooms and the Playground.

7.1.4 For and during the Operational Period for the First Phase, and for and during the Operational Period for each subsequent Phase as shall be taken down by Developer hereunder, Developer shall pay to the City the amount of forty cents ($0.40) per square foot per annum for each square foot of the Land contained within the Development Area of the applicable Phase (the "Operational Period Ground Rental"); provided, however, the Operational Period Ground Rental for Phase 1 shall not include the number of square feet comprising the Cell Phone Lot, the Public Restrooms and the Playground.

7.2 Ground Rental Adjustment. On each Adjustment Date, the annual Operational Period Ground Rental in effect with respect to any and all Phases which are then in an Operational Period hereunder shall be adjusted by multiplying the Operational Period Ground Rental in effect immediately preceding the Adjustment Date by a fraction, the numerator of which shall equal CPI-2, and the denominator of which shall equal CPI-1. For clarity and avoidance of doubt, the initial rate of Operational Period Ground Rental to be paid on any subsequently-developed Phase of the Project (that is, any Phase coming on line with an Operational Period commencing subsequent to the commencement date of the Operational Period for the First Phase) shall be computed at the then-current rate of Operational Period Ground Rental applicable to the First Phase (or, for any Phase subsequent to the second Phase, all prior Phases), and then will be subject to adjustment on the next occurring Adjustment Date. In applying this formula, the following definitions shall be applicable:

7.2.1 The term "Adjustment Date" shall mean the first day of the calendar month next following the fifth (5^{th}) annual anniversary date of the commencement of the Operational Period for the First Phase and each fifth (5^{th}) annual anniversary of such date throughout the Term of this Agreement; provided, however, that in the event the Operational Period of the First Phase shall commence on the first (1^{st}) day of a month, then the first Adjustment Date shall be the date which is the fifth (5^{th}) annual anniversary of such date of commencement.

7.2.2 The term "Bureau" shall mean the United States Department of Labor, Bureau of Labor Statistics, or any successor agency of the United States that shall issue the indices or data referred to in Paragraph 7.2.3 below.

7.2.3 The term "CPI" shall mean the monthly indices of the National Consumer Price Index for All Urban Consumers, U.S. City Average (All Items; 1982-1984 = 100) issued by the Bureau.

7.2.4 The term "CPI-1" shall mean the monthly CPI for the latest calendar month which ends at least ninety (90) days before the prior Adjustment Date; provided, however, that for the first such Adjustment Date, the term "CPI-1" shall mean the monthly CPI for the latest calendar month which ended at least ninety (90) days prior to the date of commencement of the Operational Period for the First Phase.

7.2.5 The term "CPI-2" shall mean the monthly CPI for the latest calendar month which ends at least ninety (90) days before the Adjustment Date on which the adjustment to the Operational Period Ground Rental is being computed.

7.2.6 In the event that (a) the Bureau ceases to use the 1982-84 average of 100 as the basis of calculation, or (b) a substantial change is made in the number or character of "market basket" items used in determining the CPI, or (c) the City and Developer mutually agree in writing that the CPI does not accurately reflect the purchasing power of the dollar, or (d) the CPI shall be discontinued for any reason, then, in any such event, the City shall designate an alternative index from indices supplied by the Bureau or from an alternative index comparable to the CPI, along with information which will make possible the conversion of the alternative index in computing any adjustments to the Operational Period Ground Rental hereunder. If for any reason the Bureau does not furnish such an index and such information, the parties shall thereafter accept and use such other index of comparable statistics on the cost of living in the United States as shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority then to be selected by the City (but subject to the commercially reasonable approval of Developer).

7.3 Service Station Rental. A Sublessee which operates a service station (including, without limitation, any convenience store which also operates as a service station) selling fuel (or Developer if such facility is operated by Developer) shall pay directly to the City a percentage rent at the rate of one cent ($0.01) per gallon of fuel delivered to the service station (the "Service Station Rental").

7.4 Net Cash Flow Rental. Net Cash Flow Rental (as it may sometimes be referred to herein) will be in addition to all other rentals and fees to be paid to City under this Agreement, and shall be considered a part of Additional Rent. It is anticipated that the Project will generate sufficient Net Operating Income (NOI) to provide Developer a Target Return on Investment (TROI), as hereinafter specified, so that any additional NOI beyond the TROI will be shared between the Developer (75%) and the City (25%). For purposes of this section, the following definitions shall apply:

7.4.1 "Gross Revenues" means any and all revenues paid to and/or payable to the Developer entity in connection with this Agreement and/or the Premises (and any and all Phases thereof), and shall include, without limitation, amounts from the following sources:

(1) All Building lease income received or payable to Developer;
(2) All Land lease income received or payable to Developer;
(3) Convenience Store/Gas Station rental income received;
(4) Incentive fees received from Gas Station based on 1 Cent per Gallon of gasoline or diesel sold;
(5) Incentive fees and/or percentage rents received from Building leases based on achieving sales thresholds;

(6) Any other amounts received from food or retail trailer lot rentals; and
(7) All rentals and other amounts paid directly to the Developer by all subtenants, licensees and/or concessionaires.

Excluded from Gross Revenues are amounts for insurance proceeds and rebates; net proceeds from refinancings, are, however included in Gross Revenues.

7.4.2 "Project Costs" means amounts paid or contributed by Developer to include, but not limited to, costs incurred for architects, engineers, appraisals, financing costs, legal and professional fees related to design and construction, insurance related to design and construction, furniture and fixtures, building/permitting fees, consultant fees, commissions, hard construction costs, mortgage interest costs, and any other normal and customary expenditure spent on developing, constructing and leasing the Project. The Project Costs may include a Developer Overhead Fee (herein so called) not to exceed six (6%) percent of other qualified Project Costs.

7.4.3 "Operating Expenses" means all costs directly associated with conducting normal operations, and may include, but not limited to, marketing, utilities, insurance related to property and operation, taxes, administrative costs, management fees, supplies, maintenance, commissions, accounting, annual CPA fees, legal and professional fees related to operation and management of the Project, and other operational costs incurred in the normal course of business, but will exclude such items as depreciation, mortgage debt service and ground lease rentals or other payments. Management fees included in Operating Expenses will be commercially reasonable and shall in no event exceed five (5%) percent of Gross Revenues.

7.4.4 "Net Operating Income" or "NOI" means annual Gross Revenue derived from the Project less annual Operating Expenses.

7.4.5 "Return on Investment" or "ROI" means annual Net Operating Income divided by Project Costs and multiplied by 100 (expressed as a percentage). Developer will receive a twelve (12%) percent ROI (i.e., the TROI) annually before any Excess NOI distributions. Return on Investment will be paid to Developer on an annual basis and will not be compounded.

7.4.6 "ROI Trigger" means annual Net Operating Income, which, when divided into Project Costs in order to compute annual NOI, yields a result equal to the Target Return on Investment (TROI).

7.4.7 "Excess NOI" means Net Operating Income less the ROI Trigger, calculated annually.

7.4.8 "Target Return on Investment" or "TROI" means twelve percent (12%).

Developer will receive seventy-five percent (75%) and City will receive twenty-five percent (25%) of Excess NOI, to be calculated and paid annually. In addition to providing City with audited financial statements, Developer shall have an independent Certified Public Accounting (CPA) firm licensed to practice in Texas determine the annual Excess NOI amounts and distributable amounts for any year in which ROI is being paid to Developer. Thereafter, audited financial statements will be utilized for the NOI sharing calculations. The City may at its option request any additional details from the Developer and/or its CPA to verify the accuracy of the calculations to its satisfaction. As an illustration, it is projected that Project Costs for each Phase and the estimated sharing of NOI (i.e., Excess NOI) will be as follows (i.e., in this illustration, all NOI exceeding the amounts in the "ROI Trigger" column would be Excess NOI distributable 75% to Developer and 25% to the City):

Separate Phase	Estimated Project Costs	TROI	ROI Trigger
Phase I	$3,358,732	12%	$403,047
Phase I + II	$6,295,727	12%	$755,487
Phase III	$407,120	12%	$48,854
Phase IV	$412,117	12%	$49,454

The estimated and actual Project Costs shall be certified by the CPA audit firm annually and approved by the Director, which approval will not be unreasonably withheld.

7.5 Payment of Rent. The rentals, if any, to be paid by Developer pursuant to and in accordance with Paragraph 7.3 and/or Paragraph 7.4 above are collectively and for convenience referred to herein as "Additional Rentals." Additional Rentals shall be due and payable concurrently with the payment of the Ground Rentals provided for in Paragraph 7.1 hereof. Ground Rentals, Additional Rentals and any other fees, sums or charges required by the terms of this Agreement to be paid by Developer to the City may sometimes be referred to collectively as "Rent" (or simply "rent" or sometimes "rentals" or "rental").

7.6 Late Charge. Any monies not paid on or before the fifth (5^{th}) day following the due date (including NSF payments) shall bear interest at the Default Rate until paid and entitle the City to charge Developer an administrative processing charge in an amount equal to five percent (5%) of the amount then due. The administrative processing charge is agreed by the parties to be liquidated damages and to constitute a reasonable estimate of the extra administrative costs and expenses expected to be incurred by the City in handling such delinquency.

7.7 Books and Records

7.7.1 Developer shall keep and maintain complete and accurate books and records necessary for the fulfillment of Developer's obligations under this Agreement in accordance with generally accepted accounting principles consistently applied and in a form satisfactory to the City throughout the Term of this Agreement and for four (4) years after expiration or earlier termination of the Agreement. Developer shall keep and maintain books and records in sufficient detail to fully and properly document and account for all transactions which relate to the amounts reported to the City. Developer shall require Sublessees to keep and maintain books and records consistent with this Agreement.

7.7.2 Subject to any Sublessees' proprietary system, Developer shall be required, and shall require all Sublessees, to install a cash control system or point of sale equipment which shall record all sales or service transactions by category with all data necessary to provide the City with information required in this Agreement. All cash registers must be equipped with tapes, or similar records, upon which transaction details are imprinted. Beginning and ending sales totalizer counter readings shall be recorded at least once every 24 hours or as frequently as the proprietary system will allow. Additionally, the sales or cash receipt system must be capable of proving, in a satisfactory manner to the City, that all transactions are recorded.

7.7.3 In addition to the financial statements required of Developer pursuant to other provisions of this Agreement, Developer shall provide the City, within one hundred eighty (180) days following Substantial Completion of each Phase, a calculation of Developer's Original Capital Improvements Cost, defined below, together with reasonable and substantiating evidentiary documentation. "Developer's Original Capital Improvements Cost" shall mean, and refer to, the actual and verifiable costs and expenses incurred by Developer and/or any Sublessees, as the case may be, in connection with the construction of any improvements to the Development Area of each Phase, which shall include both "hard" construction costs and so-called "soft" costs associated with the design and permitting of such improvements; provided, however, that any such "soft" costs associated with the design and/or permitting of the improvements shall be included in the calculation of Developer's Original Capital Improvements Cost only to the extent such "soft" costs do not exceed seventeen percent (17%) of the total "hard" costs of construction.

7.7.4 Throughout the Term, within ninety (90) days following the conclusion of each twelve (12) month period (or portion of a twelve (12) month period, as may be necessary), beginning with the twelve (12) month period starting on the First Phase Occupancy Date, Developer shall submit to the Director the following:

7.7.4.1 A statement of the Excess NOI and Net Cash Flow Rental, if any, for the subject year (or portion of a year, including substantiating documentation supporting the calculation of any Net Cash Flow Rental consistent with the provisions of Paragraph 7.4 hereof); a calculation of Ground Rentals and Additional Rentals due to the City for the subject year (or portion of a year); and a schedule showing the total actual payments to the City for any reason during the subject year (or portion of year), to be prepared by a CPA, in accordance with generally accepted accounting principles, consistently applied. The CPA's report shall include an opinion as to whether the statement of Excess NOI and Net Cash Flow Rental, if any, is accurate and whether the rent due has been accurately collected, calculated, reported and paid according to the terms of this Agreement. If Developer is delinquent for

more than thirty (30) days of when the audit is due to the City, Developer shall pay the City one hundred dollars ($100.00) every day until it is provided to the City; and

7.7.4.2 A summarization of all the above described certified statements, certified as accurate and complete by the Chief Financial Officer or other executive officer of Developer.

7.7.5 The above certified statements and summary shall be made to determine the correctness of the computation of all Ground Rentals and Additional Rentals. If through the foregoing it is established that additional rentals or charges are due to the City, Developer shall pay such additional rentals or charges to the City not later than fifteen (15) days after completion of such statement and receipt of written notice from the Director. If it is established that Developer has overpaid the City, then Developer and the City agree to apply such overpayments as a credit toward future Ground Rentals; provided, however, in no event shall Developer have a credit toward future Ground Rentals that exceeds ten percent (10%) of the total annual Ground Rentals due for each year.

ARTICLE VIII. RIGHTS AND DUTIES OF CITY

8.1 Right to Inspect and Maintain. The City shall have the right at all reasonable times to enter upon and inspect the Premises to observe the performance by Developer of its obligations hereunder and to do any act which City may be obligated or have the right to do under this Agreement, the City Code, or Airport regulations. Except in an emergency, the City shall use reasonable efforts to minimize disruption to Developer arising out of such inspections. If upon entry it is determined that Developer's obligations pursuant to the terms of Article X are not being performed adequately, the City shall so notify Developer in writing. If Developer does not commence maintenance or repair as specified in such notice within thirty (30) days after receipt of such notice, the City, or its agents, contractors or employees, shall have the right to enter upon the particular area and perform the maintenance or repair. Notwithstanding the foregoing, in the event of the occurrence of an emergency condition (meaning that personal injury, property damage, or both, or the violation of a Regulation, is imminent), the City may immediately, and without advance notice to Developer, enter upon the particular area and perform immediate maintenance or repair. The City's cost for the performance of such maintenance or repair plus an amount equal to fifteen percent (15%) of cost to cover administrative costs, shall be charged to and paid by Developer as additional fees.

8.2 Audits and Enforcement

8.2.1 Upon not less than fifteen (15) days' prior written notice, the City's auditors or other authorized representatives shall, at any time or times during the Term of this Agreement and within four (4) years after expiration or earlier termination of this Agreement, have access to, and the right to audit, examine or reproduce, any and all books and records of the Developer and Sublessees related to performance under this Agreement, including, without limitation, those pertaining to the calculation and payment of all Ground Rentals, Additional Rentals, Project Costs for each Phase, Gross Revenues, Operating Expenses, Operating Income, debt service, and any other fees and amounts payable to the City or related to the performance under this Agreement. Developer shall retain such books and records for the longer of four (4) years after the Expiration Date or until completion of all pending audits or litigation between the parties. Developer shall either keep and maintain all such records at a mutually acceptable location in Austin, Texas, or make such books and records available to City in Austin within fifteen (15) days of receipt of written demand. If, as a result of such inspection and audit, it is established that additional Ground Rentals, Additional Rentals or other fees or charges are due to City, Developer shall, upon written notice by City, pay such additional fees, plus interest at the Default Rate, within ten (10) days of written notice. If a City audit reveals a discrepancy of more than three percent (3%) between the amount of Ground Rentals, Additional Rentals and fees paid by Developer and the amounts determined to be due by the audit, Developer shall reimburse City for the cost of such audit. If as a result of such inspection and audit it is established that Developer has overpaid fees due to City, such overpayment shall be refunded to Developer. Except at the end of the Term, such refund shall be in the form of a credit against future Rent payments.

8.2.2 The City's right to audit shall include the right to inspect all books and records and account system reports of all subleases and subcontracts pertaining to the Premises entered into by Developer. The City Attorney or his or her designee shall have the right, after consultation with the Director, to enforce all legal rights and obligations under this Agreement without further authorization. Developer covenants to provide the City Attorney

all documents and records that the City Attorney deems necessary to assist in determining Developer's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

8.2.3 If Developer does not provide the City the books and records within twenty (20) calendar days of receipt of written demand, Developer shall pay City one hundred dollars ($100.00) each day until the books and records are provided to the City.

8.3 Operation as a Public Airport. City shall operate and maintain the Airport as a public airport in accordance with all applicable Regulations.

8.4 Aviation Rights. Developer acknowledges that the Land, and the uses to be made thereon, will be subject to flights of aircraft taking off and landing at the Airport, which may result in aircraft noise levels of DNL 65dB or greater, as well as vibration, air pollution and other effects from the flight of aircraft near or over the Land. There is reserved to the City the unrestricted right of flight for the passage of aircraft above the surface of the Land, including the right to cause in such airspace such noises as may be inherent to the operation of aircraft now known or hereafter used for navigation of flight in the air; and, there shall be reserved to the City the unrestricted right to use said air space for landing at, taking off from, or operating aircraft on or over the Airport. **DEVELOPER EXPRESSLY UNDERSTANDS THAT THE CITY SHALL NOT BE LIABLE FOR ANY DAMAGE TO ANY PORTION OF THE LAND, OR TO ANY IMPROVEMENTS CONSTRUCTED THEREON, ARISING OUT OF THE OPERATION OF AIRCRAFT IN THE AIR SPACE ABOVE THE LAND.**

8.5 Right of Further Development of Airport

8.5.1 The City hereby reserves the right to further develop or improve the landing areas of the Airport as it sees fit without obligation to maintain and repair any particular portion of the facilities and aviation right-of-ways and to otherwise preserve the Airport's right of flight for the passage of aircraft in the airspace above the Land. Accordingly, City may expand and/or improve the Airport as it, in its sole judgment, may deem necessary to provide required facilities in the interest of the public and the City and in accordance with all applicable standards, rules, regulations, or laws of the FAA.

8.5.2 If City determines that an expansion or modification at the Airport necessitates recovery of the Premises, the City shall have the right to terminate this Agreement, in whole or in part, provided that any partial termination, absent Developer's consent, must be in respect of all of the Development Area of the applicable affected Phase(s), by giving seven hundred twenty (720) days' advance written notice to Developer; provided, however, that: (A) City hereby confirms to Developer that there presently are no plans for the Airport to be expanded or modified in a manner which would necessitate recovery of the Premises; (B) in no event will any such termination occur or be effective during the first twenty (20) years of the Term of this Agreement; and (C) in no event will any termination or diminution of Developer's rights under this Agreement occur until and unless City pays to Developer the undepreciated amount of Developer's Original Capital Improvements Cost, as audited and approved by City, such depreciation to occur (i) over a period of forty (40) years or (ii) in the case of interior finish or other substantially similar work constructed by or for any particular Sublessee, over the duration of the non-cancelable term of the applicable sublease (such undepreciated amount, as to any particular Phase or Phases, being herein called the "Developer's Cost Recovery Payment").

8.5.3 The City hereby reserves the right to further develop, expand, or improve the hotel located at the Airport as deems reasonably necessary to provide required facilities and services in the interest of the public and the City.

ARTICLE IX. COMMUNICATION SERVICES

9.1 Voice and Data Services. The Airport is designated as a "MPOE" (minimum point of entry). All external voice and data communications shall terminate at the demarcation point located in the City's Communication Center. Developer shall use the City's fiber optics and Copper Premises Distribution System ("PDS") to connect to the demarcation point. The Airport is designated as a Shared Tenant Services ("STS") site. Developer shall enter into a STS Terms of Use for telephone and/or data services at one of the following service levels:

9.1.1 Full Service: all telephone and data services will be provided on a rental basis. It shall include installation, CLEC services, training, customer service, and maintenance.

9.1.2 Switched Local Service: only CLEC services will be provided and delivered to the Developer's site(s). The Developer will provide the telephones.

9.1.3 Provisioned Connectivity Service: CLEC network services will be delivered from the Department's communication building to the Developer's site(s). The Developer shall provide all CLEC and telephone service.

9.2 Telephone Service Charges. Payment of all telephone service charges, including installation, maintenance, moves, adds, changes, long distance and local provider service, shall be Developer's sole responsibility. Developer shall not enter into any telephone agreement that conflicts with the City's MPOE, the telephone demarcation point, or STS.

9.3 Data Communications Service. The PDS carries data transmission services throughout the Airport. Developer, at Developer's sole cost and expense, must provide all equipment necessary to connect to the PDS. Developer acknowledges, for purposes of the foregoing, that data transmission for purposes of the operation of the MUFIDS will require connection to the PDS. All data transmission and switching equipment shall comply with the City's specifications. Developer shall pay the fees established by the City for the use of the PDS for data transmission. Shared tenant services shall include data transmission lines or Developer may choose to use the PDS to connect to an alternate provider at the demarcation point. All data communication service charges, including installation, maintenance, moves, adds, and changes, shall be borne solely by Developer.

9.4 Television Service. Developer may not install satellite dishes, antennae or similar receiving devices within the Development Area for any Phase without the prior written approval from the Director. All television service charges, including installation, maintenance, moves, adds, changes and cable channel charges, shall be borne solely by Developer.

9.5 Invoicing and Payment. Developer must apply for and sign the Airport Shared Telephone System Terms of Usage ("STS Terms of Usage"). Developer understands that it shall be billed monthly for its PDS and STS charges under this Article IX. Payment for PDS and STS charges is not included in the Ground Rentals and must be paid by Developer as provided in the STS Terms of Usage. Non-payment of telephone service charges shall be an event of default under this Agreement.

9.6 Computer Networks. Developer shall, at its sole cost and expense, procure, install and maintain all computer networks within the Development Area for each Phase. Developer shall coordinate with the Department's Information Systems for networked services.

ARTICLE X. MAINTENANCE AND REPAIR

10.1 Developer's Maintenance and Repair Obligations. Developer, at its sole cost and expense, shall keep, maintain and repair the Premises and every part thereof, excluding only the Cell Phone Lot and Public Restrooms, in good order and repair and in a safe condition consistent with the standards utilized at the Airport at all times during the Term of this Agreement. This obligation shall include and encompass replacements as needed, from time to time, which such replacements shall be of a quality substantially equal to, or exceeding, the original in materials and workmanship. Developer, at its sole cost and expense, shall be responsible for modernization, including all future mandatory code compliance updates and upgrades to all improvements and grounds. Developer, at its sole cost and

expense, shall keep the Premises reasonably free from rubbish, filth and refuse, including the Playground, Cell Phone Lot, and Public Restrooms. Developer, at its sole cost and expense, shall provide a necessary number of covered trash and recycling receptacles located throughout the Premises and arrange and pay for regular trash pickup in cooperation with the Airport's efforts to reduce foreign object debris/damage generation and wildlife intrusions. Developer, at its sole cost and expense, shall also maintain a pest control program in accordance with Department policies.

10.2 The City's Maintenance and Repair Obligations. The City shall, at its sole cost and expense, keep and maintain only the Cell Phone Lot and Public Restrooms, and no other portion of the Premises, in good order and repair consistent with the standards utilized at the Airport. The City shall not be responsible for the maintenance, repair or replacement of any other portion of the Premises.

ARTICLE XI. RELEASE AND INDEMNIFICATION

11.1 **RELEASE. EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, DEVELOPER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY PARTIES"), FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT.**

11.2 **INDEMNIFICATION**

11.2.1 **DEVELOPER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY PARTIES HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH, OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

11.2.1.1 **ANY BREACH OF THIS AGREEMENT BY DEVELOPER, OR ANY SUBLESSEE, AS THE CASE MAY BE, AND THEIR RESPECTIVE AGENTS, EMPLOYEES, OR CONTRACTORS (COLLECTIVELY, THE "DEVELOPER PARTIES");**

11.2.1.2 **ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE DEVELOPER PARTIES HEREUNDER;**

11.2.1.3 **ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE, OR INTENTIONAL OR WILLFUL ACTS OR OMISSIONS OF THE DEVELOPER PARTIES IN CONNECTION WITH THIS AGREEMENT, OF THE CONSTRUCTION, DEVELOPMENT, OPERATION OR USE OF THE PREMISES;**

11.2.1.4 **THE CITY PARTIES' ACTUAL OR ALLEGED SOLE OR CONCURRENT NEGLIGENCE, REGARDLESS OF WHETHER DEVELOPER IS IMMUNE FROM LIABILITY OR NOT; AND**

11.2.1.5 **THE CITY PARTIES' AND DEVELOPER PARTIES' ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER DEVELOPER IS IMMUNE FROM LIABILITY OR NOT.**

11.2.2 **DEVELOPER SHALL NOT BE EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS ARTICLE XI IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DEVELOPER PARTIES CONCURRENT WITH THAT OF THE**

INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS AGREEMENT SHALL NOT AFFECT DEVELOPER'S INDEMNITY OBLIGATIONS.

11.2.3 **DEVELOPER SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. DEVELOPER MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR DEVELOPER, AS DEVELOPER MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE BORNE BY DEVELOPER AND DEVELOPER SHALL MAINTAIN ADEQUATE INSURANCE TO COVER ANY LOSS(ES) WHICH MIGHT BE INCURRED IF SUCH CONTEST IS ULTIMATELY UNSUCCESSFUL. IN NO EVENT MAY DEVELOPER ADMIT LIABILITY ON THE PART OF CITY OR ANY CITY PARTY WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE AUSTIN CITY ATTORNEY.**

11.2.4 **DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY PARTIES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THE AGREEMENT TERMINATES.**

11.2.5 **THE FOREGOING INDEMNIFICATION SHALL NOT BE INTERPRETED AS REQUIRING DEVELOPER TO INDEMNIFY THE CITY PARTIES FROM ANY LIABILITY ARISING SOLELY OUT OF THE CITY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE UNDER THIS AGREEMENT.**

11.3 **CONTRACTOR, LESSEE AND TENANT RELEASE AND INDEMNIFICATION. DEVELOPER SHALL REQUIRE ALL OF ITS CONTRACTORS, SUBCONTRACTORS AND SUBLESSEES (AND THEIR RESPECTIVE CONTRACTORS AND EMPLOYEES) TO RELEASE AND INDEMNIFY THE CITY PARTIES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS THE DEVELOPER'S RELEASE AND INDEMNITY TO THE CITY PARTIES.**

11.4 **WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHER SPECIAL DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, THOSE PREDICATED IN WHOLE OR IN PART UPON CLAIMS ASSERTED BY ANY OF DEVELOPER'S SUBLESSEES OR THEIR RESPECTIVE AGENTS, EMPLOYEES, LICENSEES, CONCESSIONAIRES, CONTRACTORS AND INVITEES.**

11.5 Notice of Claims. If the Developer receives notice of any claim or circumstances which could give rise to an indemnified loss, the Developer shall give written notice to the City of such claim or circumstances within five (5) business days. Notice shall be delivered either personally or by certified mail, return receipt requested, and shall be directly sent to the Austin City Attorney, 301 West 2nd Street, Austin, Texas 78701 and to the City at the address specified in Paragraph 24.4.

11.6 Defense of Claims

11.6.1 Developer may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Developer shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, Developer must advise the City as to whether or not it will defend the claim. If Developer does not assume the defense, the City shall assume and control the defense, and all reasonable defense expenses constitute an indemnification loss.

11.6.2 If Developer elects to defend the claim, the City may, at its own expense, retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Developer may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Developer does not fund in full, or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement. Participation by the City's counsel in the defense or any settlement

negotiations shall not interfere with, prohibit, or in any material manner impede the strategy or progress of Developer's counsel's representation.

ARTICLE XII. TAXES

12.1 Taxes and Assessments. Developer shall pay or cause to be paid prior to delinquency all taxes of whatever character that may be levied or charged upon the Premises and/or the operations of Developer and/or its Sublessees hereunder, including, without limitation, ad valorem taxes and assessments on the Premises (including all Facilities comprising the Premises), all sales and/or use taxes, any tax or assessment that may be levied by the TABC, and any and all other taxes and/or assessments relating to the use of the Premises (or any application portion thereof) by Developer or any of its Sublessees. Developer shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. Developer and its respective Sublessees shall be responsible for the payment of all personal property taxes on their respective personal property from time to time placed in or upon the Premises, whether constituting a part of the Removable Fixtures or otherwise.

12.2 Right to Contest Taxes. Developer shall have the right to contest in good faith and by all appropriate proceedings the amount, applicability or validity of any tax or assessment pertaining to the Premises set forth in at its own cost or expense. If, at any time, payment of any tax or assessment becomes necessary to prevent any forfeiture or loss, Developer shall pay the tax or assessment in time to prevent the forfeiture or loss.

12.3 Tax Reports. Upon request by the City, Developer shall furnish to the Airport copies of its quarterly Texas sales and use tax returns as well as certain portions of Texas and federal income tax returns and possessory interest tax returns and any amendments thereto. All copies of such returns must be certified copies of the original documents as prepared by a CPA. Developer and all Sublessees shall immediately notify and provide the City with copies of any audit reports pertaining to the Facilities conducted by the Texas Franchise Tax Board or the Board of Equalization.

ARTICLE XIII. INSURANCE AND PERFORMANCE SECURITY

13.1 Insurance Coverages and Coverage Limits. With no intent to limit Developer's liability or the indemnification provisions set forth in Article XI of this Agreement, or other insurance requirements as provided for in this Agreement, Developer shall obtain, at a minimum, on or before the Effective Date of this Agreement and thereafter maintain in full force and effect, at all times during the Term of this Agreement, the insurance set forth on Schedule 2, attached hereto; provided, however, that the Director may by written notice to Developer reestablish the minimum limits of liability and types of coverages set forth on Schedule 2 as necessary from time to time.

13.2 Form of Policies. The insurance coverages required hereunder may be in one or more policies of insurance, the form(s) of which shall be approved by the Director. It is agreed, however, that nothing the Director does or fails to do shall relieve Developer from its duties to provide the required coverages hereunder, and Director's actions or inactions will never be construed as waiving City's rights hereunder.

13.3 Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas and have an A.M. Best's rating of at least A- and a Best's Financial Size Category of Class VII or better, according to the most current edition Best's Key Rating Guide, Property-Casualty United States.

13.4 Insured Parties. Each policy, except those for Workers Compensation and Employer's Liability, must name the City (and its officers, agents and employees) as additional insured parties on the original policy and all renewals or replacements in accordance with the following endorsements:

13.4.1 Commercial General Liability Insurance – City of Austin as additional insured Form CG 2010; and

13.4.2 Business Automobile Liability Insurance – City of Austin named as additional insured Form CA 2048.

13.5 Premiums and Deductibles. Developer shall be solely responsible for payment of all insurance premium requirements hereunder, and the City shall not be obligated to pay any premiums. Developer shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents or employees.

13.6 Cancellation. Developer and its Sublessees shall give thirty (30) days' advance written notice to the Director if any insurance policies are to be cancelled, materially changed or non-renewed in accordance with the following endorsements:

13.6.1 Worker's Compensation and Employers Liability – a 30 day notice of cancellation/material change in favor of the City of Austin Form WC 420601;

13.6.2 Commercial General Liability Insurance – a 30 day notice of cancellation in favor of the City of Austin endorsement CG 0205; and

13.6.3 Business Automobile Liability Insurance – a 30 day notice of cancellation in favor of the City of Austin Form CA 0244.

13.6.4 Within such thirty (30) day period, Developer and its Sublessees shall procure other suitable policies in lieu of those about to be cancelled, materially changed or non-renewed, as applicable, so as to maintain in effect the required coverage. If Developer does not comply with this requirement, then, in addition to any other rights or remedies available to the City, the Director, at his or her sole discretion, may immediately suspend Developer from any further performance under this Agreement and begin procedures to terminate for default.

13.7 Notice of Impaired Coverage. Developer shall give written notice to the Director within five (5) days of the date upon which total claims by any party against Developer reduce the aggregate amount of coverage below the amounts required by this Agreement.

13.8 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees, in accordance with the following endorsements:

13.8.1 Worker's Compensation and Employers Liability – waiver of subrogation in favor of the City of Austin, form WC 420304;

13.8.2 Commercial General Liability Insurance – waiver of transfer of right of recovery against others in favor of the City of Austin endorsement CG 2404; and

13.8.3 Business Automobile Liability Insurance – waiver of subrogation endorsement CA 0444.

13.9 Endorsement of Primary Insurance. Each policy hereunder, except Worker's Compensation, shall be primary insurance to any other insurance available to the additional insured with respect to claims arising hereunder.

13.10 Contractors and Sublessees. Developer shall require all Contractors and Sublessees to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount shall be commensurate with the amount of the applicable contract, subcontract or sublease.

13.11 City Right to Review and Adjust Coverage Limits. The Director reserves the right at reasonable intervals during the Term of this Agreement to cause the insurance requirements of this Article XIII to be reviewed by the City's Risk Manager or an independent insurance consultant experienced in insurance for public airports in Texas, taking into consideration changes in statutory law, court decisions, or the claims history of Developer, and, based on the written recommendations of such consultant or Risk Manager, to reasonably adjust the insurance coverage and limits required herein.

13.12 Proof of Insurance. Prior to commencing any performance hereunder and at any time during the Term, Developer shall furnish Director with Certificates of Insurance. If requested in writing by the Director, Developer

shall furnish the City with certified copies of Developer's actual insurance policies. Failure of Developer to provide certified copies, as requested, within thirty (30) days after receipt of written notice from Director, may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Developer, continuously and without interruption, maintain in force the required insurance coverages set forth above. Failure of Developer to comply with this requirement shall constitute a default of Developer allowing the City, at its option, and in addition to any other rights or remedies the City may have, to immediately terminate this Agreement. Developer agrees that the City shall never be argued to have waived or be estopped to assert its right to terminate this Agreement hereunder because of any acts or omissions by the City regarding its review of insurance documents provided by Developer, its assigns, or their respective agents or employees.

13.13 City Contact Address. All endorsements, waivers, and notices of cancellation endorsements, as well as Certificates of Insurance naming City as additional insureds, shall indicate the City's contact information as follows:

City of Austin/Department of Aviation
Attn: Airport Properties Manager
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

13.14 Claims Against Developer. If a claim, demand, suit or other action is made or brought by any person against Developer arising out of or concerning this Agreement, Developer shall give written notice thereof to the City within two (2) business days after being notified of such claim, demand, suit or action. Such notice shall enclose a true copy of all written claims. If the claim is not written, or the information is not discernible from the written claim, Developer shall state the date of notification of any such claim, demand, suit or other action, the names and addresses of the person(s) or party(ies) asserting such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action or proceeding, and the name of any person or party against whom or which such claim is being made. The notice shall be given to the Director as provided herein, and to the City Attorney, City Hall, 301 West 2nd Street, Austin, Texas 78701.

ARTICLE XIV. CASUALTY LOSS AND CONDEMNATION

14.1 Casualty Loss. Should the Premises during the Term of this Agreement be wholly or partially destroyed or damaged by fire, or any other casualty whatsoever, Developer shall promptly repair, replace, restore or reconstruct the same in substantially the form in which the same existed prior to any such casualty and with at least as good workmanship and quality as the improvements being repaired or replaced, all in compliance with the provisions of Article V hereof but with such alterations or modification shall be consistent with the further terms and provisions hereof. Developer shall commence such work on or before one hundred eighty (180) days from the event giving rise to such construction obligation and such work shall be completed thereafter with reasonable diligence. In the event of any casualty damage to all or any part of the Premises occurring after the twenty-fifth (25^{th}) anniversary of the Effective Date of the Agreement which would require more than ninety (90) days to repair and restore after commencement of restoration, Developer shall have the option to terminate this Agreement at any time prior to commencement of rebuilding by giving notice of termination to the City.

In the event of termination of this Agreement (i) by Developer under the circumstances set forth above, or (ii) by the Director as a result of Developer's failure to commence (or complete) restoration for any of the reasons or under any of the circumstances set forth above, this Agreement shall terminate and come to an end upon Developer's termination or the Director's termination, as applicable, as though the date of such termination by Developer were the date of expiration of the term of this Agreement, and all insurance proceeds shall be payable as follows: first, to discharge any previously made and existing leasehold mortgages made by Developer and/or its Sublessees; second, to the City in an amount sufficient to pay the cost to clear the Premises of the partially damaged or destroyed improvements; and third, with the balance to be divided equally between Developer and the City.

In the event of any such casualty, the rental and other payments herein provided for shall not be abated, and the occurrence of any such casualty shall not cause a termination of this Agreement except as herein provided.

14.2 Condemnation

14.2.1 The City and Developer agree that should all of the Premises or Developer's leasehold estate be condemned, which term shall include any condemnation, or conveyance in avoidance or settlement of condemnation or eminent domain proceedings, then this Agreement shall terminate as of the date the condemning authority takes possession, and the award will be distributed and payable to the City and Developer as follows:

14.2.1.1 The City shall receive the full amount awarded for the value of the Land, if condemned, excluding the value of any improvements to the Land;

14.2.1.2 The Leasehold Mortgagees, as that term is defined in Article XVIII, of Developer and/or its Sublessees shall receive an award up to the amount necessary to satisfy and release their respective mortgage(s);

14.2.1.3 The City and Developer shall apportion the amount awarded for the value of the improvements and other non-removable improvements on the basis that the City shall receive a percentage which is the product of 2.5% multiplied by the number of full years at the date of taking since the date of commencement of the Operational Period for the First Phase, with Developer receiving the balance; and

14.2.1.4 Developer shall receive the full award for Removable Fixtures, signs, relocation costs and any other expense compensated in the award.

14.2.2 Should a part of the Premises be condemned, then in such event, this Agreement shall nevertheless continue in effect as to the remainder of the Premises unless in Developer's reasonable judgment so much of the Premises are condemned as to make it economically unsound to attempt to use the remainder for the uses and purposes contemplated herein, in which latter event this Agreement shall terminate upon notice of termination by Developer to the City, with such termination to be effective as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had been thus taken or condemned. In the event of such condemnation of a portion of the Premises where this Agreement is not terminated pursuant to this paragraph, the Ground Rentals payable during the remainder of the term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis having due regard to the square footage of the portion of the Premises thus taken or condemned as compared to the remainder thereof and taking into consideration the extent, if any, to which Developer's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking or condemnation.

14.2.3 If the whole or any part of the Premises or Developer's interest in this Agreement are taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term of this Agreement shall not be reduced or affected in any way, and Developer shall continue to pay in full the all rents, charges and fees as though such taking had not occurred. In the event of any such taking, whether such award is paid by way of damages, rents or otherwise, Developer shall receive the total award unless such period of temporary use of occupancy shall extend beyond the Expiration Date of the Term of this Agreement. If the period of temporary use or occupancy extends beyond the Term of this Agreement, then after payment to the City therefrom of the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, the balance of the award shall be divided between Developer and the City in the same ratio that the part of the entire period for such compensation is made falling before the date of expiration, and that part falling after, bear to such entire period, respectively.

ARTICLE XV. MWBE AND OTHER REQUIREMENTS

15.1 Minority and Women Business Enterprises. It is the City's policy to ensure that Minority-owned and Women-owned Business Enterprises ("MWBE") have the full opportunity to compete for and participate in City contracts. The policies and objectives of City Code Chapter 2-9(A) through 2-9(D), respectively, are incorporated into this Agreement ("M/WBE Program Ordinance"). Developer shall develop and implement a MWBE Procurement Program ("MWBE Program"), which shall comply with City Code Chapter 2-9(A) through 2-9(D), respectively, in the design and construction of the Premises. The MWBE Program shall be incorporated into and made a part of this Agreement for all purposes. The Developer shall meet gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the director of the City's Small and Minority Business Resources Department ("SMBR") in accordance with the M/WBE Program Ordinance

and rules. Prior to advertising a bid for any portion of the design or construction work, Developer shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by SMBR shall be based on the proposed size, type, and scope of work to be undertaken by the Developer and described in the bid documents, and the availability of each group of MWBEs to perform elements of the work. The City may utilize either the cumulative MWBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set project MBE\WBE participation goals as provided in Section 2-9A-19 (*Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction*), or as may subsequently be amended. SMBR shall have ten (10) business days from receipt of a bid package from Developer in order to evaluate and determine the required level for utilization of MWBE project or phase-specific goals or subgoals, and shall notify the Developer in writing of SMBR's determination. For any year in which Developer fails to meet each of the goals or subgoals established by SMBR, Developer must demonstrate good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance. Developer shall submit documentation demonstrating its own good faith efforts to meet the goals. If Developer provides documentation to SMBR evidencing its own good faith efforts, Developer shall be deemed in compliance with this paragraph.

15.2 MWBE Outreach. In an effort to meet the gender and ethnic-specific MWBE utilization goals, Developer shall implement an outreach program designed to solicit participation of MWBEs. These outreach efforts should also target small businesses generally. Developer shall apprise SMBR when Developer desires assistance from SMBR in its efforts to meet the gender and ethnic specific MWBE utilization goals. This assistance may include providing a list of certified MWBE firms from which Developer may solicit to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings, and assisting Developer in soliciting MWBE firms to provide bids.

15.3 MWBE Reporting. Within forty-five (45) days from the Effective Date of this Agreement, Developer shall provide the City with a copy of Developer's MWBE Program, and thereafter, Developer shall provide monthly reports on progress toward meeting the MWBE participation goals on forms to be provided by the City. Developer may also be required to provide periodic reports to Minority-Owned and Women-Owned Business Enterprise and Small Business Enterprise Procurement Program Advisory Committee or City Council sub-committee regarding MWBE participation. Developer shall maintain records showing (i) construction contracts and agreements with MWBEs, and (ii) specific efforts to identify and award construction contracts and agreements to MWBEs. Failure to perform Paragraphs 15.1 through 51.3 or violation by Developer of the MWBE Program shall be a Developer event of default under Paragraph 19.1.2 hereof following notice and the expiration of the applicable cure period, if any.

15.4 Wage Rates/Prevailing Wage. Developer shall comply with, and require its Contractors supplying construction labor or materials to the Project to comply with, the City's prevailing wage requirements throughout solicitation of any construction contract or procurement of services for the construction of the Facilities as described in this Agreement. The City has adopted the general prevailing rate of per diem wages established by the U.S. Department of Labor for work of similar character in the locality in which the work is performed as the minimum per diem wages to be paid in connection with a City public improvement project for the construction of public buildings. The rates the City pays are the rates in effect for Travis County at the time the City advertises these projects for bid. Resolution No. 20080605-047 adopts these same wage rates for public-private projects, such as the project contemplated by this Agreement in which the City is a participant.

15.5 Worker Safety. Developer shall also comply with, and require its contractors and subcontractors to comply with, "Third Party Resolution" Worker Safety requirements pursuant to City Ordinance No. 20110728-106 throughout the construction, improvement, renovation, restoration, replacement and/or alteration of the Facilities.

ARTICLE XVI. ENVIRONMENTAL CONDITION

16.1 Environmental Assessment. During the General Feasibility Period in respect of each Phase, Developer shall have the right to conduct an environmental assessment of the Land comprising such Phase, including, by way of example, a "Phase I" environmental study; provided, however, that any so-called "invasive" testing procedures, such as, by way of example, but without limitation, a "Phase II" environmental study, shall require the prior written consent of the City as to the type of procedure and the time or times of day(s) within which any such procedure may

be conducted. Regardless of the type of testing procedure, Developer shall be required to repair any material damage done to the Land, and the improvements thereon, if any, resulting from such inspections and assessments, as contemplated and provided for in Paragraph 4.2.2 hereof.

16.2 Presence of Hazardous Materials. If such inspection or assessment indicates the presence of Hazardous Materials, Developer, at its sole option, may either accept the Land AS IS, and assume the responsibility to remediate the Hazardous Materials to the extent necessary at Developer's expense, or Developer may by written notice to the City given on or prior to the expiration of the General Feasibility Period terminate this Agreement as to that particular Phase, or, with the written consent of the City, amend this Agreement to delete the contaminated areas. In the event any inspection or assessment indicates the presence of Hazardous Materials, and Developer allows the General Feasibility Period in respect of the applicable Phase to expire without terminating this Agreement and without obtaining the written consent of the City concerning an amendment to this Agreement for purposes of deleting the contaminated areas within such Phase, then Developer shall be deemed to have agreed to accept that portion of the Land AS IS, and to have assumed the responsibility to remediate the Hazardous Materials to the extent necessary at Developer's expense. The City shall provide Developer with a copy of any prior environmental assessments of the Land in the City's possession. Developer shall give the City prior written notice of any planned environmental assessments, including the scope of the assessment and the specific sites or locations to be investigated. Developer shall provide City with a copy of all environmental assessments of the Land performed by Developer, or on its behalf. Unless a pre-existing Environmental Condition, as defined below, affecting the Land has been identified and documented, it shall be presumed that the Environmental Condition arose during the Term of this Agreement.

16.3 NEPA Environmental Assessment. Development within the Airport (of which the Land is a part) is subject to applicable federal, state, and local environmental regulations, including, without limitation, those implementing the National Environmental Policy Act ("NEPA"). Developer may be required to perform a NEPA environmental analysis (including a Categorical Exclusion, Environmental Assessment or Environmental Impact Statement). The City shall fully cooperate with Developer in seeking a categorical exclusion from having to perform a NEPA Environmental Assessment, including providing all reasonably necessary or appropriate documentation and supporting information. All costs to perform a NEPA Environmental Assessment, or to seek a categorical exclusion from such requirement, shall be the sole responsibility of and paid by Developer.

ARTICLE XVII. ENVIRONMENTAL COMPLIANCE

17.1 Definitions

17.1.1 "City Environmental Party" shall mean the City and its elected and non-elected officials, officers, agents, employees, contractors, subcontractors, successors and assigns.

17.1.2 "Developer Environmental Party" shall mean Developer and its members, directors, officers, agents, employees, joint venture partners, Contractors, Sublessees, customers, invitees, successors and assigns.

17.1.3 "Environmental Claims" shall refer to, and include, all claims, demands, suits, actions, judgments and liabilities for: (i) removal, remediation, assessment, transportation, testing and disposal of Hazardous Materials as directed by any governmental authority, court order or Environmental Law; (ii) bodily injury or death; (iii) damage to or loss of use of property of any person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, taxes, demand orders, directives or any other requirements imposed in any manner by any governmental authority under applicable Environmental Laws; and/or (vi) costs and expenses of cleanup, remediation, assessment, testing, investigation, transportation and disposal of a Hazardous Materials spill, release or discharge.

17.1.4 "Environmental Condition" shall mean any condition with respect to the soil, subsurface waters, ground waters, surface or subsurface strata, ambient air or other environmental medium on or off the Land, whether or not yet discovered, which could or does result in any Environmental Claim to or against the City or Developer by any third party, including, without limitation, any governmental authority.

17.1.5 "Environmental Laws" shall refer to and include all applicable laws related to pollution or protection of the environment, including, without limitation, those regulating emissions, discharges, releases or threatened releases of, or the use, handling, treatment, storage, discharge, disposal or transportation of, Hazardous Materials. Environmental Laws, specifically include, but are not limited to, NEPA, the Superfund Amendments and Reauthorization Act of 1986, the Federal Insecticide, Fungicide, and Rodenticide Act, the Safe Drinking Water Act, the Oil Pollution Control Act of 1990, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Occupational Safety and Health Administration Hazard Communication Standards, the Environmental Protection Agency Oil Pollution Prevention Act, the Texas Hazardous Substances Act, and the Texas Water Quality Control Act, as all such acts may be amended.

17.1.6 "Hazardous Materials" shall mean and refer to and include all substances whose use, handling, treatment, storage, disposal, discharge or transportation is governed, controlled, restricted or regulated by Environmental Laws, that have been defined, designated or listed by any responsible governmental authority as being hazardous, toxic, radioactive, or that present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, but are not limited to, asbestos and asbestos containing materials, petroleum products, including, without limitation, crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste and pesticides.

17.2 Compliance. In its operations on the Land, a Developer Environmental Party shall strictly comply with all generally accepted industry environmental practices and standards, applicable Environmental Laws, and the applicable Airport Environmental Policies/Procedures which are included in the Storm Water Pollution Prevention Pan and Spill Response Plan ("SWPPP"), which is incorporated herein by reference. Without limiting the generality of the foregoing provision, a Developer Environmental Party shall not use or store Hazardous Materials on or at the Airport except as reasonably necessary in the ordinary course of tis permitted activities on the Premises, and then only if such Hazardous Materials are properly labeled and contained, and notice of and a copy of the current material safety data sheet is provided to the City for each such Hazardous Material. Prior to commencing operations on the Premises, Developer will complete an Airport baseline environmental questionnaire. A Developer Environmental Party shall not discharge, release or dispose of any Hazardous Materials on the Land or surrounding air, lands or waters, except as allowed under applicable Environmental Laws, and then strictly in accordance with those Environmental Laws. Developer shall promptly notify the City of any Hazardous Materials spills, releases or other discharges by a Developer Environmental Party on the Land and promptly abate, remediate and remove any of the same in accordance with applicable Environmental Laws. Developer shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries or other notices relating to the environmental condition of the Land and Airport, or any alleged material noncompliance with Environmental laws by a Developer Environmental Party on the Premises, within ten (10) days after such documents are generated by or received by Developer. If a Developer Environmental Party uses, handles, treats or stores Hazardous Materials on the Premises, it shall have a contract in place with an EPA or TCEQ approved waste transport or disposal company, and shall identify and retain spill response contractors to assist with spill response and facilitate waste characterization, transport and disposal. Complete records of all disposal manifests, receipts and other documentation shall be retained by the Developer as required under applicable Environmental Laws and made available to the City for review upon request. The City shall have the right at any time, upon reasonable written notice to Developer, to enter the Premises and inspect, take samples for testing, and otherwise investigate the Premises for the presence of Hazardous Materials. In the exercise of its rights under this paragraph, the City shall employ its commercially reasonable efforts not to unreasonably interfere with Developer's use and occupancy of the Premises (or the use and occupancy of the Premises by Developer's Sublessees) pursuant to the provisions of this Agreement.

17.3 Responsibility. Hazardous Materials that are generated, used, handled, treated, stored, disposed, released, discharged or transported by a Developer Environmental Party are the responsibility of the Developer Environmental Party and the Developer, and in no event shall they be (or be deemed to be) the responsibility of the City. Developer shall be liable for and responsible to pay all Environmental Claims that arise out of or are caused in whole or in part from a Developer Environmental Party's use, handling, treatment, storage, disposal, discharge or transportation of Hazardous Materials on, to or from the Premises, the violation of any Environmental Law by a

Developer Environmental Party, or the failure of a Developer Environmental Party to comply with the terms, provisions, covenants and conditions of this Agreement. To the extent the City incurs any costs or expenses, including attorney, consultant and expert witness fees, arising from a Developer Environmental Party's use, handling, treatment, storage, disposal, discharge or transportation of Hazardous Materials on, to or from the Premises, Developer shall promptly reimburse the City for such reasonable costs upon demand. Developer shall comply with all applicable reporting requirements under Environmental Laws with respect to spills, releases or discharges of Hazardous Materials by a Developer Environmental Party on, to or from the Premises. Except as expressly assumed by Developer under this Agreement, Developer shall not be responsible for Hazardous Materials that (i) exist on the Airport prior to the Effective Date, except to the extent that a Developer Environmental Party either disturbed or caused such pre-existing Hazardous Material to migrate, so as to give rise to an Environmental Claim, or (ii) to the extent Hazardous Materials are generated, used, handled, treated, stored, disposed, released, discharged or transported on the Airport by a City Environmental Party.

17.4 INDEMNITY. WITH NO INTENT TO LIMIT DEVELOPER'S INDEMNIFICATION TO THE CITY SET FORTH IN ARTICLE XI, DEVELOPER SHALL PROTECT, DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES FROM AND AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY OR EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES, RELATED TO:

17.4.1 ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO A DEVELOPER ENVIRONMENTAL PARTY'S USE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION OR PLACEMENT OF HAZARDOUS MATERIALS OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, ON THE AIRPORT PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;

17.4.2 ANY ACTUAL, THREATENED OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORT PREMISES BY A DEVELOPER ENVIRONMENTAL PARTY;

17.4.3 THE DISPOSAL, DISCHARGE, RELEASE OR THREATENED DISCHARGE OR RELEASE OF HAZARDOUS MATERIALS BY A DEVELOPER ENVIRONMENTAL PARTY AT THE AIRPORT THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY OR PERSONS;

17.4.4 ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY A DEVELOPER ENVIRONMENTAL PARTY AT THE AIRPORT; OR

17.4.5 ANY VIOLATION BY A DEVELOPER ENVIRONMENTAL PARTY OF ANY ENVIRONMENTAL LAWS.

THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES AND EXPENSES THAT RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, EXCEPT TO THE EXTENT THAT RESPONSIBILITY FOR REMEDIATION OF HAZARDOUS MATERIALS IS ASSUMED BY DEVELOPER PURSUANT TO THIS AGREEMENT OR A DEVELOPER ENVIRONMENTAL PARTY EITHER DISTURBED OR CAUSED PRE-EXISTING HAZARDOUS MATERIALS TO MIGRATE, SO AS TO GIVE RISE TO AN ENVIRONMENTAL CLAIM.

17.5 Removal. Prior to the end of the Term or earlier termination of this Agreement, Developer shall remove or remediate in accordance with applicable Environmental Laws and the Airport Environmental Policies/Procedures, all of Developer's Hazardous Materials from the Premises, the Airport, and surrounding lands and waters. Unless instructed otherwise by the City, Developer shall also, prior to vacating the Airport, remove all tanks, piping and other equipment which stored Hazardous Materials, or which are contaminated by Hazardous Materials. Developer's responsibilities under this paragraph shall not extend to any Environmental Conditions existing on, in or arising

from the Premises, or property adjacent or contiguous to the Premises, prior to Developer's occupancy of the Premises except to the extent that responsibility for remediation of Hazardous Materials is assumed by Developer pursuant to this Agreement or a Developer Environmental Party either disturbed or caused such pre-existing Hazardous Materials to migrate, so as to give rise to an Environmental Claim.

17.6 Compliance with Federal and State Storm Water Requirements. Developer acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES"), Federal Storm Water Regulations (40 CFR Part 122) and the Texas Pollution Discharge Elimination Program ("TPDES"). In its operations on the Premises, Developer shall comply with all applicable provisions of NPDES, TPDES, all applicable federal and state storm water Regulations, and the SWPPP, as they may be amended from time to time, in accordance with all applicable Environmental Laws. Developer, at its sole cost and expense, shall obtain, and maintain in effect, a TPDES storm water discharge permit in its own name for activities performed by a Developer Environmental Party regulated under TPDES, including fueling.

17.6.1 Developer shall cooperate with the City to ensure compliance with any NPDES, TPDES and Federal and State Storm Water Regulations storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Developer shall implement "Best Management Practices," as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of storm water to significant materials generated, stored, handled or otherwise used by Developer as defined in the federal storm water regulations.

17.6.2 The Airport's NPDES storm water discharge permit and any subsequent amendments, extensions or renewals are incorporated into this Agreement. Developer shall be bound by all applicable portions of such permit.

17.6.3 Developer shall implement the NPDES, TPDES and Federal and State Storm Water Regulations requirements as they pertain to the Land, at its sole cost and expense, unless otherwise agreed to in writing between the City and Developer. Developer shall meet all deadlines that may be imposed or agreed to by the City and Developer. Time in this regard is of the absolute essence.

17.6.4 If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES, TPDES and Federal and State Storm Water Regulations.

17.6.5 Developer shall negotiate with the appropriate governmental entity(ies) for any modifications to the Airport's NPDES and TPDES storm water discharge permit.

17.6.6 Developer shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

17.7 Natural Resources and Energy Conservation and Management. Developer shall comply with all applicable Regulations and Airport Rules and Regulations pertaining to recycling and energy or natural resource conservation and management at the Airport. The City has, or will, in the future, establish and implement an Environmental Management System for the Airport. The City reserves the right to implement an alternative fuel vehicle program. Developer shall fully cooperate with the City in the implementation and enforcement of all such conservation and management policies and programs.

17.8 Regional Storm Water Management Program. Developer shall participate and comply with all applicable Regulations and Airport Rules and Regulations pertaining to the Regional Storm Water Management Program ("RSWMP") at the Airport and pay all fees and charges for Developer's participation in the RSWMP. The City has established a RSWMP for the Airport and Developer shall fully cooperate with the City in the implementation and enforcement of the policies and programs related to the RSWMP.

17.9 Incorporation into Sublease Agreements. Developer shall incorporate the provisions of this Article XVII into any agreement it enters into with a Developer Environmental Party, including, without limitation, the obligation to indemnify the City against any Environmental Claims caused in whole or in part by a Developer Environmental Party on the Airport. The City shall be a third party beneficiary of such agreements, with the express right to enforce the environmental covenants of all Sublessees.

17.10 Right of Entry. The City may enter upon the Premises at any time for purposes of inspection to ensure that Developer is complying with this Article and any other provisions in this Agreement without committing a trespass.

17.11 Survival. The covenants, conditions and indemnities of this Article XVII, and the City's remedies with regard to this Article XVII, shall survive termination of this Agreement.

ARTICLE XVIII. ASSIGNMENT, SUBLEASING AND MORTGAGE

18.1 Assignment and Subcontracting

18.1.1 Developer shall have the right to subcontract operation of the Premises to firms affiliated, owned or under common control with Developer and/or any of its joint venture partners or to unrelated third parties subject to the Director's prior written approval, as set forth in this Article. Any such subcontracting shall not relieve Developer of its primary responsibility for performance of its duties and obligations under this Agreement.

18.1.2 Except in connection with any Leasehold Mortgage, as defined below, Developer shall not assign or in any other manner transfer, in whole or in part, any of its rights in and under this Agreement prior to Developer's achieving Substantial Completion of the First Phase of the Project. Thereafter, but no earlier, Developer may assign this Agreement and its rights hereunder with the prior written consent of the City, which consent shall not be unreasonably withheld as long as the proposed assignee possesses the requisite qualifications for a qualified "Proposer" from the criteria thereof consistent with the RFP, the relevant provisions of which, for this purpose, being incorporated herein by reference as though copied at length herein verbatim.

18.1.3 Notwithstanding the foregoing, upon the termination or cancellation of this Agreement for any reason and upon the request of the Director, Developer covenants and agrees to promptly assign all of its rights, title and interest to its contracts with its Contractors to the City without further demand by the City but only to the extent that such contracts are consistent with the terms and conditions of this Agreement. The City shall not be liable nor in any way responsible for the debts, obligations or liabilities of Developer that accrued prior to the date of assignment.

18.1.4 Nothing herein prevents the assignment of accounts receivable or the creation of a security interest as described in the Texas Business and Commerce Code. In the case of such an assignment, Developer shall immediately furnish the Director with proof of the assignment and the name, telephone number and address of the assignee (along with an email address of the principal contact person of such assignee) and a clear identification of the fees, if any, to be paid to the assignee. Any such transfer or assignment without the consent of the Director shall constitute a default on the part of Developer under this Agreement. No action or failure to act on the part of any officer, agent, or employee of the City, or on the part of any department of the City, shall constitute a waiver by the City of this provision of this Agreement. The acceptance of consideration, no matter how many times accepted, by any officer, agent or employee, or department, of the City after any such assignment, shall not constitute a waiver hereof nor any estoppel to so terminate an account thereof unless, as aforesaid, the same shall have been consented to by the Director.

18.1.5 In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after notice thereof given in writing to the Director to end the Term of this Agreement on a date which shall not be sooner than sixty (60) days after the date of such determination by the City, which determination shall be by motion, ordinance or resolution of the City Council. An assignment by operation of law, as the term is here used, shall include, but not be limited to, the vesting of Developer's right, title and interest in Developer's furnishings, fixtures and equipment, or Developer's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchaser thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee or assignee any rights, title or interest in the City property or any of the furnishings, fixtures and equipment thereof. If Developer is a natural person or partnership, vesting of Developer's estate's interest in this Agreement or Developer's estate's right, title or interest in any of Developer's furnishings, fixtures or equipment thereof in an executor, administrator or guardian of his estate or in his heir or heirs-at-law or in his devisee shall not

be considered an assignment by operation of law, but any transfer by an executor, administrator or guardian of his estate, his heirs or his heirs-at-law or devisees shall be deemed a transfer by operation of law so as to grant the City the right to terminate as hereinabove provided.

18.1.6 All contracts and subcontracts must require at a minimum strict compliance with the provisions of this Agreement and a provision providing for the assignment of the contract or subcontract to the City in the event of Developer's default hereunder and the termination of this Agreement prior to its Expiration Date, without consent of the Contractor, upon request of the City. Developer assumes ultimate responsibility for all work, acts or omissions of any Contractor made in connection with this Agreement. The above provision shall apply with equal force to any assignment proposed by Developer.

18.1.7 Developer agrees that it is responsible for the performance of its Contractors, and joint venture partners, if any, under this Agreement. Developer agrees to initiate and take all corrective action should a Contractor or joint venture partner fail to comply with its contract with Developer or any provision of this Agreement. The failure of a Contractor or joint venture partner to comply with the provisions of this Agreement shall constitute a default by Developer under this Agreement entitling the City to exercise its remedies pursuant to Article XIX hereof.

18.1.8 The City agrees not to terminate this Agreement under Paragraph 19.2 only if: (a) Developer has taken all corrective action including (if necessary) termination of its agreement with the defaulting Contractor and/or joint venture partner; and (b) Developer has in all respects made the City financially whole or otherwise cured any such default, as determined by the Director in his reasonable discretion. Failing the Director's determination that Developer has complied with (a) and (b) above, the City shall have the right to terminate this Agreement upon default under Paragraph 19.2.

18.2 Subleasing

18.2.1 Developer shall have the right to sublet all or any part of the Premises to any subsidiary, affiliate or successor company of Developer, or to any third parties; provided, however, said subleases will not release Developer from primary responsibility for performance of its duties or obligations hereunder, such primary responsibility to in all events remain with Developer.

18.2.2 A copy of this Agreement shall be made an exhibit or attachment to all subleases, it being expressly understood and agreed by Developer (for and on behalf of itself and all of its Sublessees) that all subleases shall in all respects be and remain subject and subordinate to this Agreement. All Sublessees are charged with knowledge of the terms of this Agreement and are bound to the terms herein.

18.2.3 In the event of any action which results in the termination of this Agreement, the City may collect rent from any Sublessee or anyone else who claims a right to this Agreement or who occupies any part of the Premises.

18.2.4 Developer shall have a written sublease, rental agreement, or other use and occupancy agreement with each Sublessee. Developer shall provide to City on a semi-annual basis an updated list of all Sublessees occupying the Premises, including names, addresses and telephone numbers. Developer shall provide a duly executed copy of each sublease agreement to the City within ten (10) days after execution thereof.

18.3 Leasehold Mortgage by Developer. In no event or circumstance shall Developer subject or subordinate the City's underlying fee interest in the Land to any mortgage. Developer may, however, from time to time during the Term of this Agreement have the right to mortgage, on commercially reasonable terms, the leasehold estate created hereby ("Leasehold Mortgage") and Developer's rights, title and interest in the Premises to a bona fide mortgagee (hereinafter referred to as "Leasehold Mortgagee" and such term includes Leasehold Mortgagee's agents, servicers, receivers, trustees and anyone claiming by, through or under such Leasehold Mortgagee, including its purchaser at foreclosure) in order to secure financing for the development and construction of Premises. Proceeds from any Leasehold Mortgage on the leasehold estate shall first be used to construct the Minimum Required Services pursuant to the approved Plans therefor and the other terms and provisions of this Agreement. Any Leasehold Mortgage shall be subject to the terms and provisions of this Agreement. Any Leasehold Mortgage granted by Developer shall

provide that a copy of any notice of default under the Leasehold Mortgage shall also contemporaneously be given to the City.

ARTICLE XIX. DEFAULT, TERMINATION, HOLDING OVER, SURRENDER

19.1 Developer Default. The following events shall be deemed to be events of default by Developer under this Agreement:

19.1.1 Developer shall fail to pay when due any installment of rent or any other obligation under this Agreement involving the payment of money and such failure shall continue for a period of ten (10) days following written notice thereof to Developer; provided, however, that if, during any calendar year during the Term of this Agreement, the City shall have already given Developer two (2) separate notices of any payment default on the part of Developer hereunder, no subsequent notice during the remainder of such calendar year shall be required in order for a payment delinquency to constitute an event of default hereunder – that is, the event of default will automatically occur on the third (or any subsequent) failure on the part of Developer to pay timely any installment of rent or other monetary obligation during the remainder of such calendar year.

19.1.2 Developer shall fail to comply with any provision of this Agreement, other than as described in Paragraph 19.1.1 above, and either shall not cure such failure within thirty (30) days after written notice thereof to Developer, or shall cure that particular failure but again fail to comply with the same provision of this Agreement within three (3) months following the City's written notice to Developer of the prior violation.

19.1.3 Developer or any guarantor of Developer's obligations under this Agreement shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

19.1.4 Developer or any guarantor of Developer's obligations under this Agreement shall file a petition under any section or chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or, Developer or any guarantor of Developer's obligations under this Agreement shall be adjudged bankrupt or insolvent in proceedings filed against Developer or any guarantor of Developer's obligations under this Agreement.

19.1.5 A receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Developer or any guarantor of Developer's obligations under this Agreement.

19.1.6 Failure of Developer to procure and maintain (or failure of Developer to demonstrate to the City's satisfaction that Developer has procured and maintained) the insurance coverages prescribed by Article XIII hereof.

19.1.7 Developer shall attempt to assign or in any manner transfer this Agreement or any of its rights hereunder in violation of Article XVIII hereof.

19.1.8 The failure of Developer to provide the City with a copy of Developer's MWBE Program within the time period prescribed for Developer to do so as set forth in Paragraph 15.2 hereof.

19.2 Remedies of City. Upon the occurrence of any event of default on the part of Developer pursuant to Paragraph 19.1 above, the City, at any time while such event of default continues, and in addition to any other rights or remedies the City may have at law or in equity, may (i) perform for and on behalf of Developer, and for its account, any unperformed obligation of Developer hereunder (with the right on the part of the City, if necessary, to enter upon the Premises for purposes thereof), and the costs and expenses incurred by City in undertaking performance for Developer's account, along with a ten percent (10%) administrative fee, shall promptly be reimbursed by Developer to the City as additional rent within ten (10) days following the City's invoice, (ii) terminate Developer's right of possession of the Premises without terminating this Agreement, in which instance Developer shall immediately surrender possession of the Premises to the City upon the City's demand, or (iii) terminate this Agreement effective immediately upon written notice thereof to Developer, it being expressly understood an agreed that the City may exercise its remedies in (ii) or (iii) preceding at any time, whether or not the

City has also exercised its remedy under (i) preceding, and, further, that the City may at any time exercise its remedy as expressed in (iii) preceding following any exercise by the City of its remedy expressed in (ii) preceding.

19.3 Liquidated Damages. In addition to the termination right provided for in Paragraph 19.2 above and any other remedy to which the City is entitled at law or in equity, Director shall have the right at any time following the occurrence of an event of default and for so long as the same shall continue to assess liquidated damages in an amount not to exceed $500.00 per occurrence (measured on a daily basis for each day the event of default continues uncured). Developer and City stipulate that any such liquidated damages assessment shall not be construed as a penalty; rather, Developer and City stipulate that the damages resulting from any such violation will be extremely difficult to measure and ascertain, but agree and stipulate that $500.00 per occurrence (measured on a daily basis as aforesaid) is a reasonable estimation of the damages suffered by the City. Notwithstanding the foregoing, in the event Developer shall at any time fail to provide any of the statements, reports, calculations, books and/or records, in any case within the time period prescribed for Developer to do so as expressed in any one or more of Paragraphs 7.4, 7.7.3, 7.7.4, 8.2.1 and 12.3 hereof, or in the event Developer shall fail to provide the City with proof of insurance as prescribed pursuant to paragraph 13.12 hereof promptly upon the City's demand, the City may immediately, without the need for any notice or demand (regardless of any provision contained in this Agreement which might provide or be construed otherwise), impose liquidated damages in an amount not to exceed $100.00 per occurrence (measured on a daily basis for each day that Developer has failed to timely provide the applicable statements, reports, calculations, books or other records until they are in fact provided). Developer and City stipulate that any such liquidated damages assessment shall not be construed as a penalty; rather, Developer and City stipulate that the damages resulting from any such failure on the part of Developer will be extremely difficult to measure and ascertain, but, in light of the City's compelling need to ensure Developer's compliance with its obligations hereunder and to be apprised at all times as to the performance of the Project, agree and stipulate that $100.00 per occurrence (measured on a daily basis as aforesaid) is a reasonable estimation of the damages suffered by the City. Any assessment of liquidated damages by the Director shall be paid to City by Developer within ten (10) days of receipt of an invoice for such damages.

19.4 Termination by Developer. In addition to the Developer's termination rights as provided elsewhere in this Agreement, Developer may terminate this Agreement in the event of a default by the City and a failure by the City to cure such default after receiving notice thereof, all as provided in this paragraph. Default by the City shall occur if the City fails to observe or perform any of its material duties or obligations under this Agreement. Should such a default occur, Developer may deliver a written notice to the City describing such default and the proposed date of termination, which such date may not be sooner than the thirtieth (30th) day following receipt of the notice. The City, in its reasonable judgment, may extend the proposed date of termination to a later date if the nature of the default requires more than thirty (30) days to cure. If prior to the proposed date of termination, the City cures such default, then the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then this Agreement shall terminate as of the proposed termination date. In addition, this Agreement may be terminated by Developer within thirty (30) days following written notice to the City upon the occurrence of one or more of the following events specified below:

19.4.1 The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part thereof, except in the case of a National Emergency as provided for in Paragraph 21.2, in such manner as to materially restrict Developer from operating thereon for a period of at least one hundred eighty (180) consecutive days;

19.4.2 Any exercise of authority by the federal government which materially and adversely interferes with Developer's use and enjoyment of the Premises so as to constitute a termination, in whole or in part, of this Agreement by operation of law in accordance with the laws of the United States.

19.5 No Waiver of Default. A party's election to waive a default shall not constitute a waiver of a subsequent default of the same or similar nature. A party's failure to insist on strict performance or failure to exercise a right upon default (i) shall not constitute a waiver of the right to insist on and to enforce strict compliance of other obligations or of future performance, and (ii) shall not constitute a waiver of the right to exercise any right or remedy arising out of any future default or failure to perform.

19.6 Remedies Cumulative. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereafter existing, whether by statute, at law, or in equity; provided, however, that neither party may terminate its duties under this Agreement except in accordance with the express provisions of this Agreement.

19.7 Holding Over. In the event Developer continues to occupy the Land after the Expiration Date, or any earlier termination date of this Agreement, and the City elects to accept rentals thereafter, a tenancy from month-to-month shall be created, and not for any longer period, at a monthly Ground Rental and Additional Rental rate equal to 150% of the highest monthly rental rate paid in the sixty (60) months prior to last day of the Term or earlier termination date of this Agreement. The City's acceptance of rentals during any such period of holdover shall not constitute a waiver of the City's rights under applicable law or this Agreement.

19.8 Removal of Removable Fixtures. Upon termination of this Agreement, Developer shall remove or cause to be removed all Removable Fixtures, unless instructed otherwise in writing by the City, without damage to the Premises within thirty (30) days of the Expiration Date or earlier termination hereof; provided, however, if Developer fails to remove its property and Removable Fixtures within such thirty (30) day period, the City may remove the same at Developer's expense and without any liability for damage by reason of such removal. Notwithstanding the foregoing, the City shall have the option to purchase from Developer any or all Removable Fixtures by paying to Developer the fair market value of all such items as of the Expiration Date or early termination. If the parties hereto are unable to agree upon the fair market value, Developer shall remove all such Removable Fixtures without delay and without damage to the Premises.

19.9 Surrender. Developer shall, upon the Expiration Date or earlier termination of this Agreement, surrender and yield (and correspondingly cause its Sublessees to surrender and yield) to the City the Premises.

ARTICLE XX. LIENS AND ENCUMBRANCES

20.1 Liens and Encumbrances

20.1.1 If any mechanics' or materialmen's liens or claims thereof, or other liens or orders for the payment of money, shall be filed against the Premises, or any portion thereof, by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or for Developer, or for or by reason of any change, alteration or addition to any part of the Land, or the cost or expense thereof, or any contract relating thereto, or against the City as owner thereof, Developer shall within thirty (30) days cause the same to be canceled and discharged of record, by bond or otherwise at the election and expense of Developer, and shall also defend on behalf of the City, at Developer's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens, claims or orders.

20.1.2 Developer further covenants and agrees that it will not make any contract or agreement, either oral or written, for the construction, alteration or repair of the Premises without providing in such contract or agreement that no lien or claim shall thereby be created or arise or be filed or maintained by anyone thereunder upon or against the Premises or any of the appurtenances, equipment, machinery or fixtures thereon or therein, and without procuring from the architect, engineer, contractor or contractors, materialmen, mechanics, persons, firms or corporations named in any such contract or agreement, a written waiver of all right of lien which said architect, engineer, contractors, materialmen, mechanics, persons, firms or corporations might otherwise have or claim upon the estate or interest of the City in the Premises or the items furnished by Developer, and Developer hereby agrees that before any work shall begin or material be furnished it will exhibit and cause to be delivered to the Director said original waiver or waivers of lien, and Developer shall, upon written demand from the Director, stop any and all work and delivery of materials therefor if such waivers of lien are not delivered as herein provided, and it is expressly understood and agreed, and notice is hereby given, that no persons, firms or corporations furnishing labor, material or service for the construction, repairing, reconstruction or the making of the alterations or additions to the Premises shall have any lien upon the Premises or any part or portion thereof.

20.1.3 City shall have a lien upon all Removable Fixtures and other trade fixtures of Developer and its Contractors and Sublessees placed in the Premises, to the extent permitted by law, for the purpose of securing the payment of all sums of money which may due to City from Developer under this Agreement.

20.1.4 Developer shall have no right to subordinate City's liens without express written consent by Director.

20.1.5 The City's right to receive rent shall not be subordinated to secure Developer's financing without the City's express written consent.

20.2 No Authority to Bind City. It is further agreed that no authority is given by this Agreement to Developer, expressly or impliedly, to bind the City for the payment of any money in connection with the planning, development, design, construction, repairs, alterations, additions or operations relating to the Premises, nor is there any authority given Developer hereby directly or indirectly to permit any mechanics', materialmen's or contractors' liens to arise against the Premises, and Developer expressly agrees that it will keep and save the Premises and the City harmless from all costs and damages resulting from any such liens or lien of any character created through any act or thing done by Developer.

ARTICLE XXI. LAWS, AGREEMENTS AND GRANT CONDITIONS

21.1 Grant Assurances. This Agreement is subordinated and subject to the provisions of any agreement heretofore or hereafter made between the City and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, or the expenditure of federal funds for the development of the Airport, including, without limitation, the expenditure of federal funds for the development of the Airport in accordance with provisions of the FAA's Airport Improvement Program, or in order to impose or use passenger facilities charges under 49 U.S.C. §40117.

21.2 National Emergencies. This Agreement shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during a time of war or national emergency.

21.3 Nondiscrimination and Affirmative Action. Developer, for itself, and its successors and assigns, including, without limitation, all of its Contractors and Sublessees, as a part of the consideration for this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of the Premises; (2) that in construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied benefits of, or otherwise subjected to unlawful discrimination; (3) that Developer shall use the Airport facilities in compliance with all other requirements imposed by, or pursuant to, 49 CFR Part 21 (Non-discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended; and (4) Developer assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, Non-discrimination in Airport Aid Program, to ensure that no person shall on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered in Chapter 5-3 of the City Code. Developer covenants that (i) no person shall be excluded on these grounds from participating in or receiving the services of benefits of any program or activity covered by this paragraph, and (ii) it will require that any covered Contractor or Sublessee require assurances to the same effect as required by 14 CFR Part 152, Subpart E. Developer shall post, or shall cause its Contractors and Sublessees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

21.4 ACDBE Requirements

21.4.1 This Agreement is subject to the requirements of the U.S. Department of Transportation's ("DOT") Airport Concession Disadvantaged Business Enterprise ("ACDBE") Program regulations set forth in Title 49 CFR Part 23. Developer 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,

management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Developer agrees to include the above statements in any subsequent concession agreements or contracts covered by Title 49 CFR Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

21.4.2 The City has established an ACDBE program in accordance with regulations of the DOT, 49 CFR Part 23. The City's SMBR Department Director has been delegated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the ACDBE program. Although at execution of this Agreement the specific types or mix of businesses in the Facility are not known, SMBR shall calculate an ACDBE goal for the Facilities using the goal methodology in place at that time and implement the ACDBE goal upon the Occupancy Date.

21.5 Economic Nondiscrimination. Developer shall make the Premises available to all users thereof on a reasonable, and not unjustly discriminatory, basis and shall charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Developer may make reasonable and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchases.

21.6 Public Accommodation Laws. Developer covenants that it shall comply fully with all Regulations governing nondiscrimination in public accommodations and commercial facilities, including, without limitation, the requirements of the Americans With Disabilities Act and all regulations hereunder, and that the Premises shall remain in compliance with those Regulations throughout the term of this Agreement.

21.7 Compliance with Laws. In its use and occupancy of the Premises, Developer shall strictly comply with applicable law. Developer shall not do, or permit anything to be done, in or on the Premises that would constitute a public or private nuisance.

21.8 Lighting and Electrical Interference. Developer shall not permit or create any electrical or other interference with radio communications between the Airport and aircraft. Developer may not install or operate any lighting on the Premises that would make it difficult for pilots to distinguish between Airport lights and those of Developer, impair visibility in the vicinity of the Airport, or otherwise endanger landing, taking off or maneuvering of aircraft.

ARTICLE XXII. SECURITY

22.1 Airport and TSA Security Regulations. Developer shall comply with applicable Airport security regulations and shall control the Premises so as to prevent unauthorized access to the Air Operations Area ("AOA"). Developer shall comply with all applicable TSA Regulations, including, without limitation, Title 49 CFR Chapter XII. Developer's security program must comply with the Airport's Security Plan. The City reserves the right to install security devices in or on the Premises, as it deems necessary. **DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, PENALTIES, FINES, COSTS, LOSS OR EXPENSE INCURRED BY THE CITY ARISING OUT OF, OR CONCERNING, A BREACH BY DEVELOPER, ANY CONTRACTOR OR SUBLESSEE, OR THEIR RESPECTIVE AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, OF DEVELOPER'S OBLIGATIONS UNDER THIS ARTICLE.**

22.2 Security Badges. Developer, at its sole cost and expense, shall be responsible for obtaining the necessary security badges for entry to the AOA or other secured or restricted area of the Airport for all Developer and Developer Contractor personnel to perform Developer's obligations under this Agreement. Developer shall be responsible for collecting and returning to the Department security badges for Developer or Developer Contractor personnel who cease to be employed on the Premises for any reason. Developer shall pay the City the sum of Five Hundred Dollars ($500.00) for each security badge issued to a Developer employee or Developer Contractor employee that is lost, or otherwise not returned as required by applicable TSA Regulations.

22.3 Non-Compliance. Developer understands and agrees that fines and/or penalties may be assessed by the TSA for Developer's noncompliance with the provisions of 49 CFR 1540 and 1542 (or successor regulations) or by other agencies for noncompliance of Regulations applicable to the Premises and the operations thereof. Developer

shall promptly reimburse the City for any fines or penalties assessed against the City because of Developer's noncompliance with 49 CFR 1540 and 1542 (or successor Regulations), as may be amended from time to time, or other applicable laws or Regulations.

22.4 Security Measures. Developer, at Developer's sole cost and expense, shall provide and install such locks, fences and other security devices or measures, as may be necessary or appropriate to (1) comply with applicable TSA regulations or the Airport Security Plan, and (2) protect and safeguard the Premises, any goods, equipment or other property stored thereon, Developer's employees, invitees, customers, and those of Developer's Sublessees and their customers. Developer shall provide the City with a current key (or combination) to all fence and exterior building locks on the Premises.

ARTICLE XXIII. RULES AND REGULATIONS

The City may adopt and enforce reasonable rules and regulations, which Developer agrees to observe and obey, with respect to the use of the Airport and its appurtenances, together with all facilities, improvements, equipment and services of the Airport, for the purpose of providing for safety, good order, good conduct, sanitation and preservation of the Airport and its facilities; provided that such rules and regulations shall be consistent with the rules, regulations and orders of the FAA, TSA, or other regulatory agency having jurisdiction, with respect to aircraft operations at the Airport; and provided, further, that such are not inconsistent with the provisions of this Agreement or the procedures prescribed, or approved, from time to time by the FAA, TSA, or other governmental authority, with respect to the operation of aircraft at the Airport.

ARTICLE XXIV. MISCELLANEOUS

24.1 Airport Symbols. Developer shall have no right to use the trademarks, symbols, trade names or name of the Airport, either directly or indirectly, in connection with any production, promotion service or publication without the prior written discretionary consent of the Director.

24.2 Applicable Laws and Venue. This Agreement is subject to all laws of the State of Texas, the City Code, the laws of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction, including, without limitation, the City's Charter, Code, and Airport regulations. Venue for any litigation relating to this Agreement shall be Travis County, Texas.

24.3 Attorneys' Fees. In the event that the City brings any action, suit or proceeding to collect all or a portion of the rent due under this Agreement, to take possession of all or a portion of the Premises, or to ensure compliance with this Agreement, Developer shall pay the City reasonable attorneys' fees and associated legal expenses, in an amount allowed by the court in said action, suit or proceedings.

24.4 Payments, Notices and Consents. Except as provided in Paragraph 11.5, all payments, notices and consents shall be sent to the following addresses:

If to City:

Austin-Bergstrom International Airport
Department of Aviation
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719
Attn: Director of Aviation

If to Developer:

_____
_____
_____

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3rd) day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed above or at such other address as the receiving party may have theretofore prescribed by notice to the sending party delivered in accordance with this paragraph.

24.5 No Third Party Beneficiary. This Agreement is made for the benefit of the parties hereto, and nothing herein shall be construed to create any right or benefit enforceable by any third party.

24.6 Entire Agreement. This Agreement contains the entire, integrated, full and final agreement between the parties relating to the subject matter hereof, and there are no other enforceable agreements between the parties, whether written or oral, relating to the subject matter. This Agreement supersedes all prior agreements and understandings of the parties, whether written or oral.

24.7 Survival of Certain Provisions. Developer shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond and service the expiration or termination of this Agreement, including, but not limited to, the indemnity provisions hereof.

24.8 Captions and Headings. Captions contained in this Agreement are for reference purposes only, and therefore will be given no effect in construing this Agreement and or not restrictive of the subject matter of any article or paragraph of this Agreement. Any reference to gender shall include the masculine, feminine and neutral.

24.9 Relationship of the Parties. The City and Developer agree that no partnership relationship between the parties hereto or joint venture between City and Developer is created by this Agreement, and Developer is not made the agent or representative of the City for any purpose or in any manner whatsoever.

24.10 No Waiver of Governmental Authority. Nothing in this Agreement shall be construed to abrogate or impair any governmental power and authority to regulate the prices, terms of service and other operations of Developer to the full extent allowed by law, regardless of whether such regulation is imposed by the City or by other governmental authority. Developer understands that such governmental power and authority may not lawfully be bartered for or contracted away, anything in this Agreement to the contrary or which seemingly could be construed to the contrary notwithstanding.

24.11 No Waiver Implied. The failure of either party to insist, in any one or more instances, upon performance of any of the terms, provisions, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, provision, covenant or condition by the other party, but the obligation of such party with respect to the future performance of such term, provision, covenant or condition shall continue in full force and effect.

24.12 Severability. In the event any term, provision, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, provision, covenant or condition herein contained, provided that such invalidity does not materially prejudice either Developer or the City and their respective rights and obligations contained in the valid terms, provisions, covenants or conditions hereof.

24.13 Written Amendment. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City (upon approval by the City Council, if and as necessary) and Developer; provided, however, that in the event the FAA or other governmental entity shall require changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or to impose or use passenger facilities under 49 U.S.C. §40117, or if it is necessary to modify this Agreement to comply with the requirements of applicable law (including, without limitation, orders and decisions of court), the FAA or other governmental authority, the City may unilaterally modify this Agreement, as may be reasonably required to obtain such funds or comply with applicable law. Nothing herein shall preclude Developer from contesting such orders or decisions, but Developer shall abide by the unilateral modification by the City, until or unless rescinded, overturned, or, if stayed, for the duration of the stay. In no event will Developer be required to pay rent greater than specified in this Agreement on account of a unilateral amendment.

24.14 Acceptance and Approval. An approval by the Director, or by any other instrumentality of the City, of any part of Developer's performance shall not be construed to waive compliance with this Agreement or applicable law or to establish a standard of performance other than required by this Agreement or by applicable law.

24.15 Ambiguities. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

24.16 No City Expenditure. Nothing in this Agreement shall be construed to require that the City make any expenditure of its funds by, through or under this Agreement. All statements or representations found anywhere in this Agreement that imply or expressly state the City has an obligation(s) to expend City funds shall be interpreted by City and Developer to mean that such obligation(s): (i) is subject to an appropriation being made by City Council; (ii) shall be met under a separate contract(s) between City and a third party(s); (iii) shall not be construed in any manner to be a third party beneficiary contract(s) benefiting Developer; and (iv) shall not give any enforcement rights, in law or equity, vested in Developer or any other person or entity, either under separate contract(s) or this Agreement.

24.17 Successors. This Agreement shall bind and benefit the parties and their legal successors and permitted assigns. This Agreement does not create any personal liability on the part of any officer, agent or employee of the City.

24.18 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party is liable to the other for damages resulting from delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is directly caused by Force Majeure at the Airport and affecting the Land. "Force Majeure" means fires, floods, explosions, acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority occurring on the Airport. If the Force Majeure is of such a nature that it requires closure of the Airport for an extended period of time, **DEVELOPER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CLOSURE.** However, Developer is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees or employees of its joint venture partners or Contractors or Sublessees. Developer shall employ only fully trained and qualified personnel during a strike.

24.19 Time Periods. Unless otherwise expressly provided herein, all time periods provided for in this Agreement shall be determined on the basis of and utilizing "calendar" days. If any date for performance or the conclusion of any time period provided for herein falls on a day which is not a business day, the date for performance or the conclusion of such time period, as the case may be, shall be deemed to be extended until the next business day. A "business day" is any day which is not a Saturday, a Sunday, or any holiday observed by the City, federally-chartered national banks, or Texas state-chartered banks.

24.20 Construction. As used in this Agreement, the words "hereof," "herein," "hereunder" and words of similar import shall mean and refer to this entire Agreement, and not to any particular article, section or paragraph hereof, unless the context clearly indicates otherwise.

24.21 Independent Covenants. The covenants of Developer to pay rent and to perform all of its other obligations hereunder are entirely independent of any covenants made by the City hereunder; no default, alleged default or failure in whole or in part of the City to perform any of its covenants hereunder shall relieve Developer from its covenants to pay and perform hereunder.

24.22 Short Form Agreement. On or immediately after the commencement of the Operational Period for the First Phase, the parties shall execute a "short form" of this Agreement (hereinafter referred to the "Short Form Agreement") for recording purposes, which shall include the identification of the parties, a description of the Land, the Effective Date, Expiration Date of the Term, and such other matters as the City and Developer may desire. The Developer shall cause the executed Short Form Agreement to be recorded in the Official Records of Real Property of Travis County, Texas. Except for the Short Form Agreement in conformity with the requirements hereof, neither this Agreement nor any other instrument containing the terms hereof shall be recorded by the parties hereto. In the event that the City or Developer shall terminate and cancel this Agreement (in whole or in part) pursuant to the provisions contained herein, Developer shall prepare, execute and deliver to the City in a form suitable for

recording, a release and cancellation of this Agreement as to the Land (or, as the case may be, the portion or portions of the Land as to which this Agreement is no longer operative and effective). Should Developer fail to do so within forty-five (45) days following notice from the City requesting such release, the City is appointed as attorney-in-fact for Developer with the power (coupled with an interest) and authority on behalf of the Developer and its successors and assigns to execute a recordable release acknowledging the termination of the Agreement, unless Developer has a bona fide dispute as to the efficacy of such termination. The filing and diligent prosecution of a lawsuit by Developer against the City asserting that the Agreement has not terminated and seeking, inter alia, a declaration thereof, shall be deemed a bona fide dispute precluding the City from executing such release as attorney-in-fact for Developer.

24.23 Subordination to Bond Ordinance. This Agreement and all rights granted to Developer hereunder are expressly subordinated and subject to the lien and provisions of the pledges, transfer, hypothecation or assignment made by the City in any bond ordinance executed by the City to issue bonds for the improvement of the Airport. The City expressly reserves the right to make such pledges and grant such liens and enter into covenants as it may deem necessary or desirable to secure and provide for the payment of bonds, including, without limitation, for the creation of reserves therefor, provided that the City shall not take any actions that would be inconsistent with the terms and conditions of this Agreement. Developer understands that the City is and will be the issuer of bonds. With respect to bonds that may be issued in the future, the interest on which is intended to be excludable from gross income from the holders of such bonds for federal income tax purposes under the Internal Revenue Code of 1986, as amended, Developer agrees that it will not act, or fail to act (and will immediately cease and desist from any action, or failure to act), with respect to the use of the Airport, if the act or failure to act may cause the City to be in non-compliance with the provisions of the Internal Revenue Code of 1986, as they may be amended, supplemented, or replaced, or the regulations or rulings issued thereunder, nor will Developer take, or persist in, any action or omission which may cause the interest on the tax-exempt bonds to either (i) not be excludable from the gross income of the holders thereof for federal income tax purposes; or (ii) become subject to the alternative minimum tax for federal income tax purposes.

24.24 **AS-IS, WHERE-IS. DEVELOPER AGREES TO ACCEPT THE LAND ON AN "AS-IS, WHERE-IS AND WITH ALL FAULTS" BASIS. THE CITY HEREBY SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR, CONCERNING (i) THE NATURE AND CONDITION OF THE LAND AND THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH DEVELOPER MAY ELECT TO CONDUCT THEREON, (ii) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, UTILITIES, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR ANY OTHER MATTER RELATING IN ANY WAY TO THE LAND, (iii) THE COMPLIANCE OF THE LAND OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER AUTHORITY OR BODY, OR (iv) THE EXISTENCE OF ANY TOXIC OR HAZARDOUS SUBSTANCE OR WASTE IN, ON, UNDER THE SURFACE OF OR ABOUT THE LAND. DEVELOPER ACKNOWLEDGES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE LAND AND THE LAND INFORMATION, DEVELOPER WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE LAND AND THE LAND INFORMATION AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. DEVELOPER FURTHER ACKNOWLEDGES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE LAND WAS OBTAINED FROM A VARIETY OF SOURCES AND THE CITY (A) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND (B) HAS NOT MADE ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN, REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, EXCEPT AS SPECIFICALLY SET FORTH HEREIN. DEVELOPER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF THE CITY HEREIN, EXCEPT AS OTHERWISE SPECIFIED HEREIN, THE CITY HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, WHATSOEVER WITH RESPECT TO THE CONDITION OF THE LAND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING CONDITION, HABITABILITY, SUITABILITY, QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND DEVELOPER ACKNOWLEDGES THAT IT IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING UPON**

ANY ORAL STATEMENT OR REPRESENTATION MADE BY THE CITY. IN ADDITION, DEVELOPER RECOGNIZES, ACKNOWLEDGES, AGREES AND UNDERSTANDS THAT THIS AGREEMENT CONVEYS TO THE CITY THE RIGHT TO COLLECT THE RENTALS AND OTHER SUMS OF MONEY DUE AND TO BECOME DUE HEREUNDER FROM DEVELOPER ON AN "ABSOLUTELY NET" BASIS, IT BEING EXPRESSLY THE UNDERSTANDING AND AGREEMENT OF THE PARTIES THAT ALL PAYMENT AND PERFORMANCE OBLIGATIONS TO BE UNDERTAKEN BY DEVELOPER HEREUNDER ARE TO BE MADE ENTIRELY AT DEVELOPER'S SOLE COST AND EXPENSE AND WITHOUT ANY CONTRIBUTION FROM THE CITY.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS HEREOF, the City and Developer have made and executed this Agreement in multiple copies, each of which shall be deemed an equal, effective as of the Effective Date.

DEVELOPER:

ABIA RETAIL, L.L.C., a Texas limited liability company

By:_____

Name: _____

Title: _____

Tax ID Number:_____

CITY:

CITY OF AUSTIN, TEXAS

_____
Executive Director
Department of Aviation

APPROVED AS TO FORM:

_____
Assistant City Attorney

Date of Executive Director's Signature: _____

EXHIBIT "A"

DESCRIPTION OF LAND

("SITE MAP")

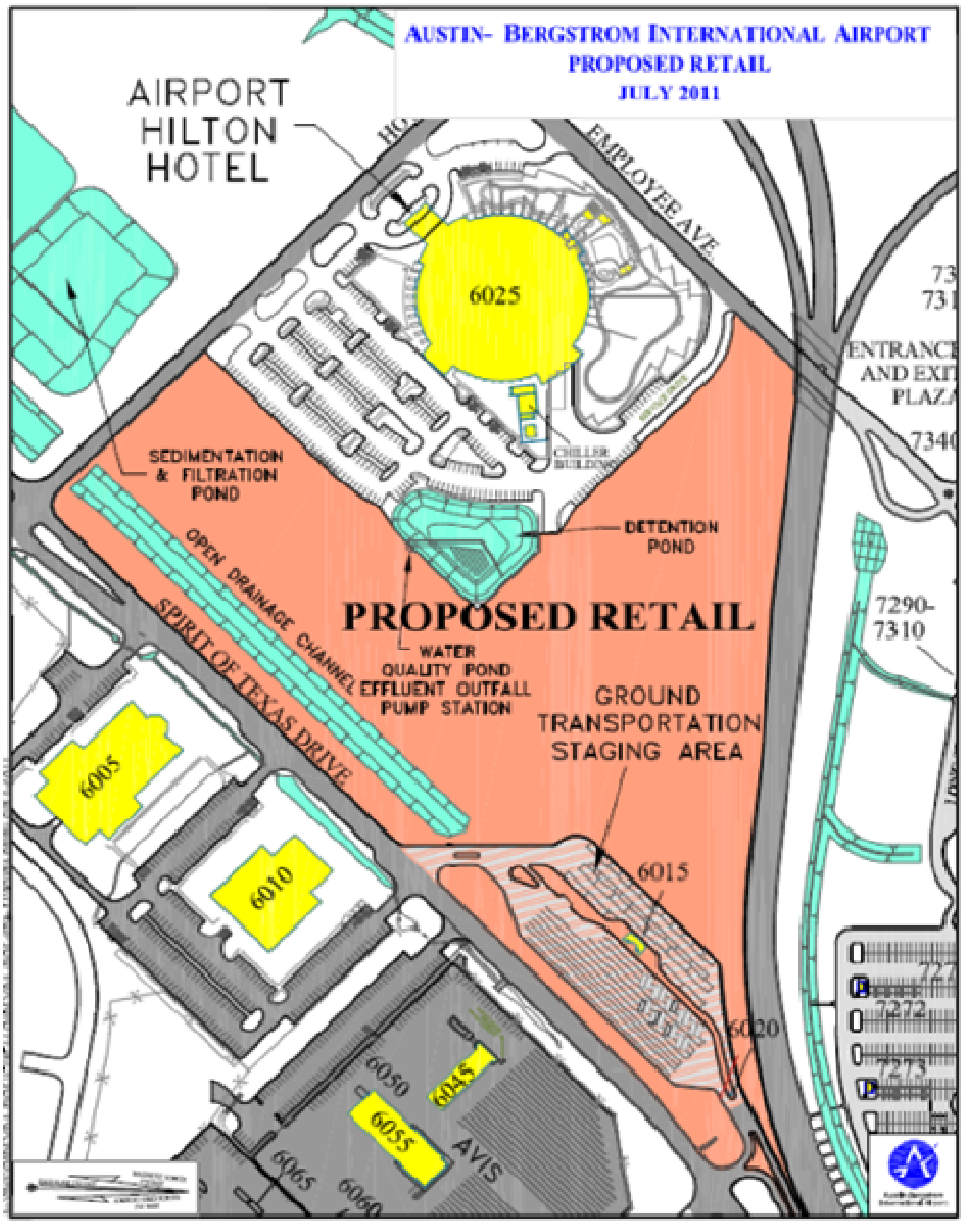

EXHIBIT "B"

RESTRICTED AREA BOUNDARY EXHIBIT

EXHIBIT "C"

PREAPPROVED RESTAURANT LIST

Developer, in its sole discretion, may choose one of the following preapproved restaurant/sports bar concepts for the Restaurant required by Article VI:

Little Woodrows
Third Base
Buffalo Wild Wings

In no event, however, shall any restaurant or sports bar on the Premises operate as Hooter's, Twin Peaks or any other concept similar thereto.

EXHIBIT "D"

PROHIBITED USES

1. Any residential mobile home park, trailer court, labor camp, junkyard or stockyard, not including mobile food vendors and/or retail airstream trailers;

2. Any recycling, dumping, disposing, incineration or reduction of garbage or refuse;

3. Any fire or bankruptcy sale (unless pursuant to a court order), "going out of business" sale, liquidation sale, auction house operation, tent program or sale, or any so-called "odd lot," close-out or liquidation store;

4. Any automobile, truck, trailer or recreational vehicle sales, leasing, or body shop repair operation;

5. Any skating or roller rink;

6. Any residential use, including, but not limited to, living quarters, sleeping apartments or lodging rooms (provided that, with the City's prior written consent as to the particular brand name and hotel operator, which consent shall not be unreasonably withheld, first-class "full service" hotels and so-called "limited service" hotels are permitted);

7. Any veterinary hospital, animal raising facilities, or pet retail shop, provided that this restriction shall not be deemed to preclude a temporary pet boarding facility for household pets;

8. Any funeral home or parlor, mortuary, cemetery or crematorium;

9. Any adult bookstore, adult video store, adult theater or other adult establishment selling, exhibiting or distributing pornographic or obscene materials;

10. Any movie theater or performance theater, provided that this restriction shall not be deemed to preclude an outdoor stage for live music performances as long as those music performances occur in accordance with all applicable local code requirements (regarding the permitting of such performances or otherwise) and all other applicable Land Use Restrictions;

11. Any church, temple, synagogue or other place of worship;

12. Any tattoo shop, massage parlor, topless club or "strip joint," or other pornography business (as determined by community standards);

13. Any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;

14. Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building in the Premises or any use which is a public or private nuisance;

15. Any so-called "head shop" or other business devoted to the sale of articles or merchandise normally used or associated with illegal, unlawful or illicit activities, such as, but not limited to, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;

16. Any circus, carnival or amusement park;

17. Any gun range or similar facility;

18. Any unusual fire, explosive or dangerous hazards (including the storage, display or sale of explosives or fireworks);

19. Any use that permits a pest infestation without prompt action to eliminate the infection;

20. Any blood bank.

EXHIBIT "E"

FORM OF PERFORMANCE BOND

Bidding Requirements, Contract Forms and Conditions of the Contract
PERFORMANCE BOND
Section 00610

STATE OF TEXAS
COUNTY OF _____

Bond No. _____
C.I.P. ID No. _____

Project Name _____
Know All Men By These Presents: That _____
of the City of _____, County of _____ __, and
State of _____, as Principal, and _____, a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto
_____
(OWNER), in the penal sum of_____
_____ U.S. Dollars ($ _____U.S.) for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated the _____ day of _____, _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all and singular covenants, conditions and agreements in and by said contract agreed and covenanted by Principal to be observed and performed, and according to true intent and meaning of said Agreement hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect. If OWNER notifies Principal and Surety the OWNER is considering declaring Principal in default, Surety agrees to meet with OWNER and Principal no later than fifteen days after receipt of such notice to discuss methods of performing the Work of the Contract.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with provisions of said Article to same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____ day of _____, _____.

_____	_____
Principal	Surety
By_____	By_____
(Signature)	(Signature)
Title_____	Title_____
Address_____	Address_____
_____	_____
_____	_____

Telephone_____Fax_____
E-Mail Address _____

Name and address of Resident Agent of Surety:

_____

_____

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

EXHIBIT "F"

FORM OF PAYMENT BOND

STATE OF TEXAS
COUNTY OF _____

Bond No. _____
C.I.P. ID No. _____

Project Name _____
Know All Men By These Presents: That _____
of the City of _____, County of _____ _____, and
State of _____, as Principal, and _____, a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto
_____ _____
(OWNER), and all Subcontractors, workers, laborers, mechanics and suppliers as their interests may appear, all of whom shall have right to sue upon this bond in the penal sum of _____
U.S. Dollars ($ _____U.S.) for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated the _____ day of _____, _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, condition of this obligation is such, that if the said Principal shall well and truly pay all Subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction of improvement of said Agreement, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with provisions of said Article to same extent as if it were copied at length herein.
Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this
_____day of _____, _____.

_____	_____
Principal	Surety
By_____	By_____
(Signature)	(Signature)
Title_____	Title_____
Address_____	Address_____
_____	_____
_____	_____

Telephone_____Fax_____
E-Mail Address _____

Name and address of Resident Agent of Surety:

_____

_____

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

SCHEDULE 1

DEFINITIONS

As used in this Agreement, the following words and phrases shall have the meanings set out below.

1. "ACDBE" is defined in Paragraph 21.4.1 hereof.

2. "Acceptance Date" means the date on which the Director approves in writing the Survey accepting the boundaries and the metes and bounds legal description of the First Phase and each subsequent Phase taken down by Developer, as contemplated pursuant to the provisions of Paragraphs 4.1.1 and 4.2.5 hereof.

3. "Adjustment Date" is defined in Paragraph 7.2.1 hereof.

4. "Agreement" is defined in the preamble hereof.

5. "Airport" and "ABIA" means Austin-Bergstrom International Airport.

6. "Airport Design Review Policies and Procedures" means **[To Be Provided by City]**, as the same may be amended from time to time.

7. "AOA" is defined in Paragraph 22.1 hereof.

8. "Approvals" is defined in Paragraph 5.8.1 hereof.

9. "Architect" is defined in Paragraph 5.3.1 hereof.

10. "Bureau" is defined in Paragraph 7.2.2 hereof.

11. "Cell Phone Lot" is defined in Paragraph 6.1.4.1 hereof.

12. "City" is defined in the preamble hereof.

13. "City Attorney" shall mean the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.

14. "City Code" is defined in Paragraph 5.2.5 hereof.

15. "City Environmental Party" is defined in Paragraph 17.1.1 hereof.

16. "City Parties" is defined in Paragraph 11.1 hereof.

17. "Construction Period" shall mean, for each Phase of the Land taken down by Developer according to the terms and provisions of this Agreement, the period of time commencing on the day following the earlier to occur of: (i) the date on which Developer has received all Entitlements in respect of such Phase or (ii) the expiration of the Entitlements Period in respect of such Phase, and expiring on the last day of the calendar month containing the day which is the earlier of: (A) the date which is three hundred sixty (360) days following the commencement of the Construction Period as aforesaid; or (B) the date on which the Facilities constructed by Developer on such Phase have been Substantially Completed.

18. "Construction Period Ground Rental" is defined in Paragraph 7.1.3 hereof.

19. "Contractors" means, collectively, any General Contractor(s) of Developer and all Subcontractors.

20. "Convenience Store" is defined in Paragraph 6.1.2.1 hereof.

21. “CPA” is defined in Paragraph 7.4 hereof.

22. “CPI” is defined in Paragraph 7.2.3 hereof.

23. “CPI-1 is defined in Paragraph 7.2.4 hereof.

24. “CPI-2” is defined in Paragraph 7.2.5 hereof.

25. “Default Rate” means the annual rate of interest equal to the lesser of (i) the prime rate then published in the *Wall Street Journal* plus 6% or (ii) the maximum rate permitted by applicable federal or state Regulations. Notwithstanding any other provision herein contained to the contrary, no provision of this Agreement shall require or permit, or be deemed to require or permit, the reserving, charging or collection of interest from either party in excess of the maximum rate or amount that such party may be required or permitted to pay pursuant to applicable law and as to which such party could successfully assert the claim or defense of usury. To be clear, it is the express intention of the City and Developer to comply strictly with all applicable usury laws; accordingly, all agreements between or among the City and Developer, whether now existing or hereafter arising, and whether written or oral, are hereby limited so that in no event or contingency, whether by reason of demand, acceleration or otherwise, shall any interest contracted for, charged, received, paid or agreed to be paid to either party by or on behalf of the other party exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to either party in excess of the maximum lawful amount, the interest payable to such party shall be reduced to the maximum amount permitted under applicable law; and, if from any circumstance either party shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the underlying principal amount of the obligation and not to the payment of interest, or, if such excessive interest exceeds the unpaid balance of the underlying principal of the obligation, such excess shall be refunded to the party which shall have paid the same. All interest paid or agreed to be paid by either party shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the underlying principal obligation so that the interest on any indebtedness for which such party is liable for such full period shall not exceed the maximum amount permitted by applicable law. This provision controls over any other provision of this Agreement which could be construed otherwise.

26. “Department” means the City’s Department of Aviation.

27. “Design Consultants” is defined in Paragraph 5.2.6 hereof.

28. “Developer” is defined in the preamble hereof. The term may also include Contractors and Sublessees, as applicable, in this Agreement; provided, however, the Developer retains the ultimate responsibility for the duties and requirements imposed upon it pursuant to this Agreement.

29. “Developer Environmental Party” is defined in Paragraph 17.1.2 hereof.

30. “Developer Parties” is defined in Paragraph 11.2.1.1 hereof.

31. “Developer’s Cost Recovery Payment” is defined in Paragraph 8.5.2 hereof.

32. “Developer’s Original Capital Improvements Cost” is defined in Paragraph 7.7.3 hereof.

33. “Development Area(s)” shall mean the portion of the Land within and constituting the particular Phase thereof to be developed by Developer pursuant to and in accordance with the terms and provisions of this Agreement.

34. “Director” shall mean the Executive Director of the Department or such person’s duly authorized designee.

35. “DOT” is defined in Paragraph 21.4.1 hereof.

36. “Effective Date” is defined in the Preamble hereof.

37. “Entitlements” is defined in Paragraph 4.3.2.2 hereof.

38. “Entitlements Period” shall mean, for each Phase of the Land taken down by Developer according to the terms and provisions of this Agreement, a period of time not to exceed four hundred and fifty five (455) days following the expiration of the General Feasibility Period in respect of that particular Phase, but in all events concluding on the date Developer receives all Entitlements for that particular Phase.

39. “Entitlements Period Ground Rental” is defined in Paragraph 7.1.2 hereof.

40. “Environmental Claims” is defined in Paragraph 17.1.3 hereof.

41. “Environmental Condition” is defined in Paragraph 17.1.4 hereof.

42. “Environmental Laws” is defined in Paragraph 17.1.5 hereof.

43. “Excess NOI” is defined in Paragraph 7.4.7 hereof.

44. “Expiration Date” is defined in Paragraph 3.1 hereof.

45. “Facility” or “Facilities” shall mean the buildings, parking lots, walkways, common areas, utilities, landscaping and all other improvements for and necessary infrastructure of the mixed use commercial development upon the Land to be designed, developed, constructed, operated and managed by Developer pursuant to and in accordance with this Agreement.

46. “Final Phase” is defined in Paragraph 4.1.6 hereof.

47. “Final Phase Rent Commencement Date” is defined in Paragraph 4.1.6 hereof.

48. “Financing” is defined in Paragraph 4.3.2.2 hereof.

49. “First Phase” or “Phase 1” is defined in Paragraph 4.1.1 hereof.

50. “Force Majeure” is defined in Paragraph 24.18 hereof.

51. “General Contractor” is defined in Paragraph 5.4.1 hereof.

52. “General Feasibility Ground Rental” is defined in Paragraph 7.1.1 hereof.

53. “General Feasibility Period” shall mean, for each Phase subsequent to the First Phase, a period of time not to exceed sixty (60) days following the date on which Developer shall have given the City a Takedown Notice in respect of that particular Phase. The General Feasibility Period for the First Phase, however, is the sixty (60) day period immediately following the Effective Date of this Agreement.

54. “Gross Revenues” is defined in Paragraph 7.4.1 hereof.

55. “Ground Rentals” is defined in Paragraph 7.1 hereof.

56. “GTSA” is defined in Paragraph 4.2.1 hereof.

57. “Hazardous Materials” is defined in Paragraph 17.1.6 hereof.

58. “Indemnified Parties” is defined in Paragraph 4.2.3 hereof.

59. "Land" shall mean that approximately sixteen (16) acre tract of real property within the boundary of ABIA, which land is shown or described in Exhibit "A" attached hereto and made a part hereof for all purposes.

60. "Land Use Restrictions" is defined in Paragraph 6.1 hereof.

61. "Leasehold Mortgage" is defined in Paragraph 18.3 hereof.

62. "Minimum Required Services" is defined in Paragraph 6.1 hereof.

63. "Monitoring Wells" is defined in Paragraph 4.3.3 hereof.

64. "MUFIDS" is defined in Paragraph 4.3.1 hereof.

65. "MWBE" is defined in Paragraph 15.1 hereof.

66. "MWBE Program" is defined in Paragraph 15.1 hereof.

67. "NEPA" is defined in Paragraph 16.3 hereof.

68. "Net Cash Flow Rental" is defined in Paragraph 7.4 hereof.

69. "Net Operating Income" is defined in Paragraph 7.4.4 hereof.

70. "NOI" is defined in Paragraph 7.4.4 hereof.

71. "NPDES" is defined in Paragraph 17.6 hereof.

72. "Occupancy Date" shall mean the earlier to occur of (a) the date on which at least fifty percent (50%) of the constructed, leasable square footage of the Facilities within any particular Phase shall have been granted a Certificate of Occupancy by the City or (b) the date on which any Sublessee first takes occupancy of, and commences its business operations within, any portion of such Facilities.

73. "Operating Expenses" is defined in Paragraph 7.4.3 hereof.

74. "Operational Period" shall mean, for each Phase taken down by the Developer according to the terms and provisions of this Agreement, the period of time commencing on the day following the expiration of the Construction Period relative to such Phase and expiring on the Expiration Date.

75. "Operational Period Ground Rental" is defined in Paragraph 7.1.4 hereof.

76. "PDS" is defined in Paragraph 9.1 hereof.

77. "Phase" or "Phases" is defined in Paragraph 4.1 hereof.

78. "Playground" is defined in Paragraph 6.1.6.1 hereof.

79. "Premises" shall mean, at any relevant time, all or that portion of the Land which then remains subject to this Agreement, together with the Facilities (if any) which shall have been constructed thereon. The Premises may also sometimes be referred to herein as the "Project."

80. "Prohibited Uses" are those as set forth on Exhibit "C" attached hereto.

81. "Project Costs" is defined in Paragraph 7.4.2 hereof.

82. "Property Manager" is defined in Paragraph 6.5 hereof.

83. "Regulations" shall mean all applicable laws, statutes, codes, including, without limitation, the Code of the City of Austin, Texas, Travis County Fire Code, and City electrical standards, judicial decisions, ordinances, regulations, including, without limitation, federal grant assurances governing the Airport, rulings, restrictive covenants, airport rules and operating instructions, certificates, permits, requirements or orders enforceable by all federal, state and local governmental or quasi-governmental authorities, including, without limitation the Federal Aviation Administration ("FAA"), the Transportation Security Administration ("TSA"), the Environmental Protection Agency ("EPA") and the Texas Commission on Environmental Quality ("TCEQ"), having jurisdiction over the Airport and/or the Land.

84. "Removable Fixtures" shall mean all trade fixtures, furnishings and equipment that are not permanently affixed to any wall, floor or ceiling in the Premises and which may be removed without any damage to the Premises.

85. "Rent" (or simply "rent," or sometimes "rentals" or "rental") and "Additional Rentals" are defined in Paragraph 7.5 hereof.

86. "Restaurant" is defined in Paragraph 6.1.3.1 hereof.

87. "Restricted Area" is defined in Paragraph 6.3.2 hereof; the Restricted Area is identified on Exhibit "B" attached hereto.

88. "Return on Investment" is defined in Paragraph 7.4.5 hereof.

89. "RFP" shall mean that request for proposal issued by the City in order to identify a developer capable of designing, developing, constructing, operating and maintaining the Facility.

90. "ROI" is defined in Paragraph 7.4.5 hereof.

91. "ROI Trigger" is defined in Paragraph 7.4.6 hereof.

92. "RSWMP" is defined in Paragraph 17.8 hereof.

93. "Service Station" is defined in Paragraph 6.1.1.1 hereof.

94. "Service Station Rental" is defined in Paragraph 7.3 hereof.

95. "Short Form Agreement" is defined in Paragraph 24.22 hereof.

96. "Site Map" is Exhibit "A" attached hereto, which shows the Land in proximity to other adjacent Airport facilities.

97. "SMBR" is defined in Schedule 3 attached hereto.

98. "Sports Bar" is defined in Paragraph 6.1.3.1 hereof.

99. "STS" is defined in Paragraph 9.1 hereof.

100. "Subcontractor" means a subcontractor of Developer.

101. "Sublessee(s)" shall mean a tenant(s) of Developer in the Premises or any other entity occupying space and paying any form of rentals to Developer; or, any entity conducting commercial activity on the Premises.

102. "Substantial Completion" (or any of its variations, such as "Substantially Complete" or "Substantially Completed") shall be deemed to have occurred in respect of the Facilities constructed upon any Phase of the Land upon the earlier to occur of (a) the date on which those Facilities have been substantially completed in

accordance with the applicable Plans therefor with the exception of only minor "punch list" items or (b) the Occupancy Date in respect of such Phase.

103. "Survey" is defined in Paragraph 4.2.5 hereof.

104. "SWPPP" is defined in Paragraph 17.2 hereof.

105. "TABC" is defined in Paragraph 6.1.2.2 hereof.

106. "Takedown Notice" means the written notice given timely by Developer to the City in respect of the second and any subsequent Phase of the Project wherein Developer advises the City of Developer's intention to take down (i.e., lease) such Phase and to thereupon, subject to and in accordance with the terms and provisions of this Agreement, design, develop, construct, operate and manage the Facilities on such Phase.

107. "Target Return on Investment" is defined in Paragraph 7.4.8 hereof.

108. "Term" is defined in Paragraph 3.1 of this Agreement; provided, however, that, irrespective of any provision contained in this Agreement which might provide or be construed otherwise, in no event will the Term of this Agreement extend beyond a date which is forty (40) years following the Final Phase Rent Commencement Date.

109. "TPDES" is defined in Paragraph 17.6 hereof.

110. "TROI" is defined in Paragraph 7.4.8 hereof.

SCHEDULE 2

INSURANCE COVERAGE AND LIMITS

Pursuant to Section 13.1, Developer shall obtain, on or before the Effective Date of this Agreement, and thereafter maintain the following insurance:

Coverage	Limit of Liability
Worker's Compensation	Limits consistent with Texas Worker's Compensation Act.
Employer's Liability	Bodily Injury by accident $1,000,000 (each accident) Bodily Injury by Disease $1,000,000 (policy limit) Bodily Injury by Disease $1,000,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Personal and Advertising Injury, , and Products & Completed Operations	Combined Limits of $5,000,000 each Occurrence and $5,000,000 aggregate; Blanket contractual liability coverage; Medical expense coverage with a minimum limit of $5,000 any one person; Fire Legal Liability with a minimum limit of $50,000, and independent contractors coverage
UST / Pollution Liability Insurance Required at this time only if pre-construction activities include boring or disturbing soil to below a depth a one (1) foot. If PLL coverage is required the City will accept the Contractor's insurance provided it names City as additional insured. Must be provided and approved by City prior to soil movement or boring activity on the Land.	$2,000,000 each occurrence and $2,000,000 aggregate
Automobile Liability Insurance (for vehicles used by Developer in the course of its performance under this Agreement, including non-owned and Hired Auto Coverage)	$2,000,000 Combined Single Limit
Excess Liability	Combined Limits of $3,000,000 each Occurrence and $5,000,000 aggregate
Property Insurance on an ALL RISK basis covering the Premises, Fixtures, Removable Fixtures, and Equipment to include and not limited to fire, lighting, vandalism, and extended coverage perils)	Full (100%) Replacement Value as determined by the City. City shall be named mortgagee or loss payee on the policy as its interest may appear and contain a waiver of subrogation endorsement in favor of City of Austin
UST / Pollution Liability Insurance	$2,000,000 per occurrence
Professional Liability Coverage for all Design Consultants	$1,000,000
All Risks Builder's Risk Insurance	100% Replacement Cost. If off-site storage is permitted, coverage shall include transit and storage in the amount sufficient to protect property being transported or stored.
Liquor Legal Liability for all contractors and sublessees selling alcohol beverages,	Bodily Injury and Property Damage, Combined Single Limit $1,000,000 per occurrence and

	$3,000,000 aggregate

Defense costs are excluded from the face amount of the policy. Aggregate limits are 12-month per policy period unless otherwise indicated.