CONCESSION MANAGEMENT, OPERATION AND DEVELOPMENT AGREEMENT

KANSAS CITY INTERNATIONAL AIRPORT

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CONCESSION MANAGEMENT, OPERATION AND DEVELOPMENT AGREEMENT

KANSAS CITY INTERNATIONAL AIRPORT

THIS CONCESSION MANAGEMENT, OPERATION AND DEVELOPMENT AGREEMENT ("**Agreement**"), made and entered into as of the _____ day of _____ , 2021 by and between the CITY OF KANSAS CITY, a municipal corporation of the State of Missouri (hereinafter called the "**City**"), and Vantage Airport Group (US) Ltd., a limited liability company organized under the laws of the State of Delaware registered to do business in the State of Missouri under Missouri Charter No. _____ ("**Developer**"). The City and Developer together are referred to herein as the "Parties".

WITNESSETH: That,

WHEREAS, the City is the owner of Kansas City International Airport, located in Platte County, Missouri, hereinafter referred to as the "**Airport**."

WHEREAS, the City is in the process of constructing a new airport terminal to replace all existing passenger aviation facilities ("**New Terminal**").

WHEREAS, the City has determined that they desire to enter into a single concession agreement to develop, lease, operate, and manage all Foodservice, Convenience and Specialty Retail concessions to provide useful merchandise and Services for the general public in the New Terminal which generates income for the City.

WHEREAS, the City issued a "Request for Proposals for the Development, Operation, and Management of the Concession Program for the New Terminal at Kansas City International Airport Request Number 04161964" (as amended, the "**RFP**").

WHEREAS, the Developer presented its proposal, included herein by reference, in competition with others submitting sealed proposals for the operation of such concession at the Airport ("**Proposal**"). Based on an evaluation of the proposals received and interviews conducted in accordance with the evaluation criteria and processes set forth in the RFP, a selection committee selected Developer's Proposal.

NOW, THEREFORE, for and in consideration of the promises, and of the mutual covenants herein contained, and the fees to be paid by the Developer, it is agreed and understood by and between the City and the Developer as follows:

DEFINITIONS

The terms defined in this Section for all purposes of this Agreement and of any instrument supplemental hereto, or relating hereto, shall have the following meanings, excepts where the context or clear implication requires otherwise:

"Affiliate" means any individual or business entity that has an ownership interest of twenty percent (20%) or more of Developer, or of which Developer has an ownership interest of 20% or more.

"Agreement" means this written agreement, awarded as a result of the RFP, between the City and Developer leasing the Premises and setting forth the Parties' rights and responsibilities.

"Airport Concession Disadvantaged Business Enterprise" or **"ACDBE"** means a business entity, whether a sole proprietorship, partnership, or corporation of which at least fifty-one percent (51%) of the interest is owned and controlled by a "socially and economically disadvantaged individual" as such term is defined in the

Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto at 49 CFR Part 23. ACDBEs must meet the experience and economic guidelines set forth in 49 CFR Part 23 and be certified by the Missouri Regional Certification Committee ("MRCC"). Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. ACDBE firms, generally, are concession operators or firms directly related to the operation of concessions.

"**Applicable Law**" means all laws, statutes, ordinances, rules, and regulations (including without limitation Environmental Laws) lawfully issued or promulgated by any Governmental Authority governing or otherwise applicable to the Developer or the Airport, including Airport Rules and Regulations and City Policies and Procedures adopted by the City, as any of the same may now exist or may hereafter be adopted or amended, modified, extended, re-enacted, re-designated, or replaced from time to time and judicial interpretations thereof.

"Back of House" means areas and equipment that are necessary for the operation of some or all concessions, but that are not generally accessible by the public. Examples of this include trash rooms, garbage rooms, and service corridors.

"Base Building Work" means the sub-floor, structural elements, demising walls at the exterior of the Premises, utilities infrastructure and other base building improvements, structures, and fixtures that the City installs at the Premises. Base Building Work includes preparation of portions of the Premises designated for concession activities in Shell Condition. This work will be completed by the New Terminal builder.

"Build-out" means all Work to improve or renovate the Premises, other than the Base Building Work, to prepare these areas to be used for their intended purposes in accordance with the Agreement. This work will be completed either by Developer, its Sublessees, or other parties through agreements with the Developer or its Sublessees, subject to approval by the City, if required.

"Capital Improvements" means the improvements, structures and fixtures initially installed by Developer and/or Sublessees in the Premises to prepare all or part of the Premises for issuance of an occupancy permit and otherwise finish it out for the Sublessee's operations, and any subsequent Refurbishments that are affixed and cannot be removed from the Base Building Work without damage to the New Terminal. Capital Improvements may include, but are not limited to, finish-out work on floors, ceilings, demising walls and store facades, storefront signage, the panel box and hook-ups to utilities wires and conduits infrastructure, decorations, shelves, counters, cash wraps, lighting and interior design and construction work necessary in general to accommodate the operation of the Premises. Ownership of all Capital Improvements in Sublessee Premises shall vest to the Developer at the expiration of a Sublease Agreement. Ownership of all Capital Improvements throughout the entirety of the Premises shall vest immediately to the City upon the expiration or termination of this Agreement as provided herein.

"City's Agents" means all persons employed or otherwise engaged with City, including, but not limited to employees, contractors, and consultants, but excluding Developer's Agents and Sublessee's Agents,

"City Council" means the City Council of the City.

"Common Area(s)" are the areas, included in the Premises, that are leased by the Developer from the City, but which are not leased by the Developer to a specific Sublessee. These may include, but are not limited to the cleaning of and maintenance of:

A. Public seating areas, including dining furniture

B. Any sanitation facilities located in Food Courts

C. Walkways through Food Courts

D. Back-room maintenance facilities

"Common Area Maintenance" or **"CAM"** means maintenance and service of designated Common Areas of the Premises, including, but not limited to:

A. Services provided for general cleaning (sweeping, mopping, and sanitation) of floors and Common Area amenities, furnishings and equipment.

B. Repair and replacement of Food Court Common Area tables, chairs, dividers, borders, and other features.

C. Collection and consolidation of Sublessee and Developer trash and recycling materials from the Premises and transportation of these materials to the centralized trash and recyclable materials collection area supplied by City, on a regular basis so to avoid the accumulation of trash, foul odors, and the potential to attract vermin. It is strongly recommended that trash be collected and removed to the centralized area at least three (3) times per day, or more often if necessitated due to the volume of trash produced. There will be no areas in which Developer may consolidate trash in the Premises, which therefore requires transportation of collected trash to the centralized area as often as it is collected.

D. Pest control and hood cleaning.

"Common Area Maintenance Fees" or **"CAM Fees"** means an amount to be invoiced as a separate line item and collected from Sublessees by Developer for the purpose of reimbursing, at cost with no mark-up permitted, all of Developer's actual out-of-pocket expenses incurred to provide Common Area Maintenance services, spread proportionately among all Sublessee Locations, substantially based on the amount of time spent in cleaning related facilities, and the approximate volume of trash that they produce. Different CAM Fees are recommended for:

A. Foodservice in Food Courts

B. Table Service

C. Other Foodservice

D. Convenience Retail

E. Other Retail and Services

By way of example, Food Service in Food Courts will generally incur a relatively high assessment percentage, due to the requirement of the cleaning of related Food Court equipment and furniture, and the relative amount of trash which they produce. Table Service might be expected to incur a larger than average assessment percentage, as they produce large amounts of trash, particularly when disposable service ware is utilized. Specialty Retail are generally expected to incur a lower assessment percentage as they do not benefit from Food Court Maintenance and tend to produce relatively little trash.

Common Areas Maintenance may be performed by Developer with its own employees, or may be subcontracted out to a third party, at the discretion of the Developer.

"Concession Fee" means the fee to be paid by Developer to the City as proposed by Developer and accepted by City for the right and privilege to occupy the Premises and provide concession services on an exclusive

basis, as more particularly described and set forth in Section 401 and as further detailed in Developer's Proposal.

"Concession Location" means an individual location within the Premises occupied and used for purposes of the sale of consumer goods or services to the public.

"Concession Manager" means the person charged by the Developer with the responsibility to manage and oversee the day-to-day operations and management of the Premises, as further explained in this Agreement.

"Concession Program" means the totality of the concession services to be managed by Developer in the New Terminal as provided in this Agreement and set forth in the Developer's Proposal, as may be amended or adjusted during the Lease Term, to include without limitation development and management of Foodservice, Convenience Retail, Specialty Retail, and Services to be offered in Concession Locations; the management of Creative Spaces and Common Areas; operation of the Loading Docks; collection of the CAM Fee and Joint Marketing Fund Fee and development and implementation of the annual marketing plan; and administration and monitoring of ACDBE and MBE/WBE participation in concession and construction opportunities.

"Construction Costs" means the sums Developer and Sublessees actually spend on the construction of improvements to Sublessee Premises, with the approval of the City. This term shall also include, for Developer, the amounts, verifiable based on payment receipts, which were paid by Developer to prepare Common Areas and Creative Spaces for use, and any renovations thereto.

"Convenience Retail" shall mean the offering for sale of merchandise commonly found in newsstands, including, but not limited to newspapers, magazines, paperback books, candy, gum, packaged snacks, grab and go sandwiches and salads, pre-packaged baked goods, bottled water and beverages, freshly brewed coffee and tea (but not espresso drinks, lattes, and similar), and souvenirs. Other types of merchandise may be offered, if approved by both City and Developer.

"Creative Spaces" means spaces which are part of the Premises which are held back for future development based on a schedule proposed by Developer and accepted by the City. These spaces may be used for any other purpose, so long as they enhance customer service, safety, the image of the New Terminal, and/or the customer experience, until the space is needed for additional Concession Locations. A failure to develop Creative Spaces pursuant to the accepted schedule may result in Developer being in default of this Agreement.

"Date of Substantial Completion" for all Concession Locations which are part of the concession plan shall be the date that is one hundred twenty (120) days from the City's issuance of permits and approvals for each Build-out. By this date, Capital Improvements shall be completed, and the Concession Location shall be ready for merchandising, staff training, soft opening, and general final readying for the New Terminal Opening Day. As of the Effective Date, the anticipated Date of Substantial Completion is February 15, 2023. For all construction following the opening of the New Terminal, a Date of Substantial Completion will be established between the City and Developer for each unit to be built or renovated.

"Day" means a calendar day of 24 hours measured from midnight to 11:59:59 of that day.

"Depreciation Schedule" means a schedule reflecting the monthly depreciation of the Eligible Costs for Capital Improvements installed or mid-term Refurbishments made by the Developer or a Sublessee in any Sublessee Premises. For Capital Investments made by the Developer, depreciation shall commence on the New Terminal Opening Day on a straight-line basis over the Lease Term. Concession Locations shall be depreciated on a straight-line basis over each Sublease Term beginning on the Date of Beneficial Occupancy of the Location. Depreciation relating to Common Area furniture shall be no more than three (3) years beginning with the date of installation. Any schedule submitted by Developer or Sublessees for this purpose shall not be

deemed a "Depreciation Schedule" until such schedule is approved by the City, which approval shall not be unreasonably withheld.

"Design and Construction Phase" or **"D&C Phase"** means the period that begins on the Effective Date and shall continue until the New Terminal Opening Day, unless earlier terminated in accordance with Article XIII of the Agreement.

"Developer" means the entity, duly organized, and qualified to do business in the State of Missouri, or any successor thereto or assignee thereof permitted by the Agreement, which develops and/or leases and manages operations that sell goods or services for a profit at the Airport under the rights granted in this Agreement.

"Developer's Agents" means all persons employed or otherwise engaged with Developer, including, but not limited to employees, contractors, consultants, and vendors, but excluding City's Agents and Sublessee's Agents.

"**Developer's Architect/Engineer**" means the licensed firm(s) engaged by Developer or its Sublessees from time to time and approved by the City, to design and prepare the Plans and specifications for the improvements to Premises.

"Disadvantaged Business Enterprise" or **"DBE"** means a business entity, whether a sole proprietorship, partnership, or corporation of which at least fifty-one percent (51%) of the interest is owned and controlled by a "socially and economically disadvantaged individual" as such term is defined in the Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto at 49 CFR Part 23. DBEs must meet the experience and economic guidelines set forth in 49 CFR Part 23 and be certified by MDOT. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. DBE firms are certified under a City program and include any type of firm which might participate in projects at an airport, including, but not limited to, design and construction firms, public relations firms, and services firms. DBE firms, within the context of this Agreement, encompass MBE ("**Minority Business Enterprises**") or WBE ("**Women-owned Business Enterprises**") firms, which are certified by the City Civil Rights and Equal Opportunity Department ("CREOD"). Please note that the designation as an MBE or WBE does not have the same meaning as the ACDBE designation.

"Drawings" means the documents showing the layout of the proposed Premises.

"**Effective Date**" means the date upon which the Agreement is operative and binding upon the Parties. The Effective Date is rebuttably presumed to be ten (10) days after the City ordinance approving this Agreement is adopted by the City Council. The precise date that constitutes the Effective Date may be hand-written by the City in Section 301, and final copies of the Agreement shall be provided to the Parties in accordance with Section 2118.

"Eligible Costs" means, for any expenditures made by Developer and its Sublessees in Capital Improvements or Refurbishments, the following:

A. Construction Costs, and

B. Architectural and engineering fees, construction management fees and the cost to obtain the applicable permits, which amounts under this clause shall not exceed fifteen percent (15%) of the contracted Construction Costs, unless otherwise approved by the City in writing, and

C. Capital Improvements (including any equipment and custom-built "trade fixtures") which constitute fixtures installed for use in the Premises, and

D. Initial Capital Improvements for which Developer is obligated to reimburse a Sublessee under an approved Sublease as the result of the termination of such Sublease without cause by Developer at City's request.

Notwithstanding the foregoing, the definition of Eligible Costs shall exclude:

A. Costs for Base Building Work incurred by the City, and

B. Costs in excess of one hundred twenty-five percent (125%) of the estimated costs of Capital Improvements provided by Developer to, and approved in writing by, the City at the time preliminary approval is sought for the Sublessee unless otherwise specifically approved by City in writing, and

C. Any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees or any non-construction-related cost) in connection with said construction, or

D. Amounts paid to any Affiliate of Developer or Sublessee.

In addition, to qualify as Eligible Costs, documentary evidence of payments for expenditures on improvements to the Sublessee Premises must be provided to the City.

"Established Price Items" means the items, as specified by the City, and which may be additionally proposed by the Developer, which prices will be equivalent to those at the QuikTrip convenience store located at 7133 NW Barry Road, Kansas City, Missouri, 64153, or a successor location as proposed by the Developer and approved by the City should the QuikTrip cease operations or substantially change its mode of operation.

The products which are initially considered Established Price Items are as follows:

A. Soft drinks in cans and bottles of any composition of 1 liter or less, excluding branded "energy" or similar drinks in cans and bottles.

B. Drinking water, still, sparkling, or flavored, in containers of 1 liter or less.

C. Fountain soft drinks in all sizes.

D. Other products mutually agreed by City and Developer.

"Expiration Date" means 11:59 P.M. on the date that is the fifteenth anniversary of the New Terminal Opening Day, such earlier date if this Agreement is terminated earlier in accordance with Article XIII hereof, or such later date if this Agreement is extended in accordance with Section 2105.

"FFE" means furniture, fixtures and equipment supplied by Developer in the Build-out of any location.

"FIFA" means the Fédération Internationale de Football Association, the organization which, along with the USSF, will be responsible for organizing the Tournament.

"FIFA Store" means the store, located in the New Terminal, which will be operated by FIFA during the six (6) month period prior to the Tournament, until one (1) month after the Tournament concludes.

"First-Class Manner" means the manner of operation of the concessions such that the standards for cleanliness and customer service meet those of upscale malls and similar high-quality airport and non-airport retail/food and beverage facilities.

"Food Court" means areas within the Premises, including both Sublessee Premises and Food Court Common Areas that are characterized as having multiple food-service type Sublessee Premises that share a common seating area.

"Food Court Common Area" means all areas within the Food Court that are not Sublessee Premises.

"**Foodservice"** means all Sublessee Premises which engage in the sale of food products for immediate consumption or consumption on aircraft. Foodservice concessions consist of, generally:

A. **Table Service**, including bars, which include appropriately spaced internal seating areas where food and beverages are brought to the tables by staff. Table Service may also include food bars, such as sushi bars or seafood bars, where a customer sits at a counter and is served food designed to be consumed at the counter.

B. **Counter Service**, either freestanding or as part of Food Court, where customers place orders and pay for them at a counter and the food is generally received soon after that at the counter, with seating either internal to the unit or immediately adjacent and, most often, shared with other Counter Service. Units offering coffee products may be Counter Service if they offer significant seating internal or immediately adjacent to the Counter Service.

C. **Walkaway**, which offer food that is generally designed to be consumed elsewhere within the New Terminal or on aircraft, including grab and go units as well as snack/coffee offerings with no seating related to the concession location.

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

"Governmental Authority" means any federal, State, county, City (including the Aviation Department) or other governmental entity, or any subdivision thereof, with authority over the Airport or the Developer.

"**Indemnified Party**" or "**Indemnified Parties**" means the City and each of its elected and appointed officers and officials, employees, agents, contractors, subcontractors and volunteers.

"Joint Marketing Fund" means the accumulation of funds contributed by Sublessees to Developer, to be spent by Developer on the marketing and promotion of the Concession Program or on any item or service that may enhance the overall passenger experience at the New Terminal related to concessions, all in accordance with the approved Concession Program and its annual marketing plan component.

"Joint Marketing Fund Fee" means each Sublessee's contribution to the Joint Marketing Fund, payable monthly, in an amount not to exceed 0.5% of Operator Gross Receipts.

"Kiosks" means a Premises that is a mobile or non-mobile, and is a free-standing facility not affixed to the Terminal, whether completely free-standing or located against the wall, that is used as a selling location for merchandise or Services.

"Lease Term" means the period beginning on the Effective Date and ending on the date set forth in Section 301, or such shorter period if this Agreement is terminated in accordance with Article XIII or such later period if this Agreement is extended in accordance with Section 2105.

"Lease Year" means the 365-day periods (366 days for any leap years), commencing on the first Day of the fiscal year recognized by the City, which Day is May 1. The first Lease Year, which may be a partial calendar year, shall end on April 30, at 11:59 p.m. The final Lease Year, which may also be a partial calendar year, shall end on the Expiration Date.

"Minimum Annual Guarantee" or **"MAG"** means the minimum Concession Fee to be paid by Developer to the City, which MAG shall be calculated for purposes of this Agreement to be $1.75 per enplaned passenger, as set forth in Article IV.

"New Terminal" means the facility constructed by the City to replace the former commercial passenger terminals of the Airport, in which Developer shall develop, lease, and manage the Premises.

"New Terminal Opening Day" means the date the New Terminal is opened for scheduled passenger service operations by all, or substantially all, airlines serving the Airport. As provided in Section 512 herein, the New Terminal Opening Day constitutes the date upon which the Developer is expected to open all Concession Locations which are part of the Developer's initial plan for the sale of consumer goods and services to the public. As of the Effective Date, the anticipated New Terminal Opening Day is March 3, 2023. The City shall notify Developer upon any change in the New Terminal Opening Day immediately upon making, or contractually agreeing with any other entity, to the change.

"Operational Phase" means the period beginning at 12:00 A.M. local time on the New Terminal Opening Day and ending on the Expiration Date or earlier date if this Agreement is terminated in accordance with Article XIII or later date if this Agreement is extended in accordance with Section 2105.

"Operator" means a Sublessee, and Developer for all areas not subleased to other parties.

"Operator Gross Receipts" mean and includes all monies paid or payable to each and every Operator of a Concession Location whether in cash, credit or otherwise, for sales made or services rendered at or from the Airport regardless of when or where the order therefor is received, including, without limitation:

A. Proceeds from the sale of gift and merchandise certificates (unless such gift or merchandise certificates can only be used within the Concession Locations, which are to be recognized as Gross Receipts at the time they are redeemed).

B. Sales occurring at the Airport, whether made from a Concession Location or an airport wide system or application developed by Developer or City, for which the product is shipped to a destination of the customer's choice.

C. Catalogue sales, whether in print or electronic (catalogues displayed or accessed within Sublessee Premises must include a tracking number unique to the Sublessee Premises that allows for an auditable method for tracking such sales).

D. Internet sales for delivery at the Airport or when merchandise to fill such orders is taken from Concession Locations.

E. If commercially reasonable technology is implemented that can capture this, Internet sales, where orders are placed due to displays or sales activities which take place anywhere within the Airport.

F. Orders for merchandise placed anywhere within the Airport utilizing an airport-wide system or application developed by Developer, City, or a third-party contracted by the Developer.

G. Deposits not refunded to purchasers.

H. Orders taken at the Premises (although such orders may be filled elsewhere).

I. Display allowances, placement allowances, or other promotional incentives received by Sublessees from vendors, suppliers or manufacturers and other revenues of any other type arising out of or in connection with any Sublessee's operations at the Airport.

J. The sales value of “add-ons” to shipping services done as a convenience for customers (whether for free, or at the cost of the provision of the shipping), such as wrapping charge, convenience or handling fees, envelopes or boxes for shipping, etc.

K. Sales through Automated Retail units; and

L. All insurance proceeds received due to loss of gross earnings under any Sublessee's business interruption insurance coverage.

A "sale" shall be treated as consummated for the purposes of this definition or service deemed rendered, and the entire amount of the sales price shall be included in Operator Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of payment. No deduction shall be allowed for uncollected or uncollectable credit accounts or "bad" checks.

Operator Gross Receipts shall not include:

A. Any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, Operator Gross Receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise or Services but only if separately stated from the sales price and only to the extent paid by Sublessees to any duly constituted governmental/taxing authority,

B. The exchange of merchandise between the stores or warehouses owned by or affiliated with any Sublessee, if any, where such exchanges of goods or merchandise are made solely for the convenient operation of the business of such Sublessee and not for the purpose of consummating a sale which has theretofore been made at, in, from or upon the Premises nor for the purpose of decreasing payments otherwise due the City hereunder which otherwise would be made at, in, from or upon the Premises,

C. The amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by a purchaser and accepted by the Operator to which it is returned,

D. Sale of fixtures, equipment or other items of property that are not stock in trade and not in the ordinary course of any Operator's business,

E. Any receipts of an Operator that arise from its operations under any other contract with the City and are subject to a percentage fee or percentage rent under that contract,

F. Shipping and delivery charges if provided at the cost of such shipping or delivery and such services are merely an accommodation to customers. Any additional service that is sold to a customer (wrapping, or a handling fee, for example) are considered to be part of Gross Receipts,

G. Fees charged to Sublessees, including but not limited to:

    1. Common Area Maintenance Fees

2. Joint Marketing Fund Fees

3. Delivery Fees (if applicable)

4. Dock Management Fees (if applicable)

H. Receipts in the form of refunds from or the value of merchandise, services, supplies or equipment returned to vendors, shippers, suppliers, or manufacturers including volume discounts received from a Sublessee's vendors, suppliers, or manufacturers,

I. Customary discounts given by an Operator on sales of merchandise or Services to its own employees, if separately stated, and limited in total amount to not more than one percent (1%) of its Operator Gross Receipts per month,

J. Discounts, if separately stated, given by Operators on sales of merchandise or Services to employees of Developer, City, airline employees, and other persons employed at the Airport who are in possession of a valid City or Airline issued badge,

K. Gratuities for services performed by employees of an Operator that are paid by an Operator or its customers to such employees,

L. The sale or transfer in bulk of the inventory of an Operator to a purchaser of all or substantially all the assets of such Operator in a transaction not in the ordinary course of such Operator's business,

M. Amounts given as discounts to customers redeeming coupons issued either by the specific Sublessee, the brand of the operation, or through catalog, flyer, brochure, or advertisement (paper or virtual) prepared by Developer as part of the joint marketing effort for the Terminal,

N. Except with respect to insurance proceeds received due to loss of gross earnings under any Operator's business interruption insurance coverage as provided above and/or insurance proceeds that may be payable to City under such coverage, receipts from all other insurance proceeds received by an Operator as a result of a loss or casualty.

"Payment and Performance and Maintenance Bonds," means a surety bond (in a form substantially similar to that shown in **Exhibit A**) given to the City by the Developer to secure both payment and performance and maintenance for the Work.

"Plans" means the completed set of architectural working plans, Drawings and specifications and engineering Drawings and specifications prepared by the Developer's or Sublessee' Architect/Engineer of record for the construction of Capital Improvements or Refurbishments.

"Premises" means the area that the Developer will lease, develop, manage, and market, including the specified Premises and Sublessee Premises, the designated Common Areas, and Creative Spaces, depicted in **Exhibit C**.

"Proposal" means the document(s) requested by the City and submitted by Developer in accordance with the Request for Proposals, including both the Technical Proposal and Financial Proposal submitted by Developer. Both RFP and Developer's response are included herein by reference and have full effect as if they were attached physically. Any plan, proposal, commitment, or promise made by Developer in its Proposal as accepted by City shall have the full effect as if it was a part of this Agreement.

"Rent" means the payment to Developer by Sublessees for the subletting of the Premises, calculated as the greater of a percentage of Operator Gross Receipts or a minimum annual guarantee, as agreed to between

Developer and each Sublessee. Rent shall not include fees charged by Developer to Sublessees including Common Area Maintenance Fees, Joint Marketing Fund Fees, Delivery Fees and Dock Management Fees. Rent further shall not include Storage Rent as set forth in Developer's Proposal and loan repayment or other payments to the Developer in connection with ACDBE financing as set forth in Developer's Proposal.

"Request For Proposal" or **"RFP"** means the "Request For Proposals For The Development, Operation, and Management of the Concession Program For the New Terminal at Kansas City International Airport (Request No. 04161964)" issued by the City on February 8, 2021, and any and all exhibits and addenda thereto.

"Services" means personal, health and business services including but not limited to shoeshine shops, nail salons, massage services, barber shop/hairdresser/beauty salon, pharmacies, banks, automated teller machines, gyms, food delivery within the New Terminal, and personal shopping services. Services further shall include additional personal, health and business services introduced at comparable airports to the Airport during the Lease Term. Services do not include airline passenger lounges, the USO lounge, meeting and conference rooms, state or local lottery, children's play areas, sensory areas for passengers with disabilities, mother's lactation rooms, and pet relief areas.

"Shell Condition" means smooth concrete floors, demising studs and walls, and utility services (conduits, lines, pipes) of typical commercial capacity and size located at the lease lines of each of Premises or in reasonable proximity thereto which shall be prepared by the City for use by Developer.

"Specialty Retail" means retail uses, other than those defined as Convenience Retail. These may include but are not limited to automated retail; bookstores; clothing stores; carry-away packaged food not meant for immediate consumption; accessory stores; and music stores, for example.

"Sublease" means a lease executed by the Developer and approved by the City conveying to a Sublessee the same interest in certain Premises that the Developer enjoys for a specified term.

"Sublease Term" means the period of time, pursuant to Section 305 herein, during which a specific Sublessee operates and manages one or more Sublessee Premises.

"Sublessee" and **"Sublessees"** means any sole proprietor(s) or business entities having the right to sublease and occupy any portion of the Premises under a Sublease with the Developer.

"Sublessee's Agents" means all persons employed or otherwise engaged with Sublessee, including, but not limited to employees, contractors, and consultants, excluding City's Agents and Developer's Agents.

"Sublessee Premises" means the individual leasehold of a shop, store, office, storage area, or kitchen area subleased, or available to be subleased, through rights granted in the Agreement.

"Tenant Design Standards" means standards, established by the City, as may be amended from time to time, to set forth the esthetic qualities required of Concessions in the Terminal. Tenant Design Standards are attached as **Exhibit B**.

"Tournament" means the 2026 Men's World Cup Tournament.

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

"USSF" means the United States Soccer Federation, the organization which will be working with FIFA within the United States to host the Tournament

"Work" means everything necessary for the design, engineering, construction, and installation of the Capital Improvements.

ARTICLE I
PREMISES

SECTION 101. DESCRIPTION OF PREMISES. City hereby leases to Developer and Developer leases from the City for the uses and purposes described in Section 201 below, and subject to terms, covenants, and conditions contained in this Agreement, the real property described in **Exhibit C** referred to as the "**Premises**".

A. The City, in its sole discretion, may, if it becomes necessary in the orderly development of the Airport and in accordance with Section 1401.C hereof, require the relocation of any portion of the Premises to other space within the New Terminal that is reasonably suitable for the purposes for which this Agreement is entered into as such purposes are set forth herein.

B. At any time during the Lease Term, and on one or more occasions, either party may propose to modify the Premises to add such additional areas of the New Terminal as may be suitable for Foodservice, Convenience Retail, Specialty Retail, and/or Services, and, on mutual consent, the Parties shall modify **Exhibit C** accordingly. The Premises may be expanded to areas of the New Terminal as it exists on the New Terminal Opening Day; any expansion of the New Terminal; or any additional satellite, concourse or unit terminal at the Airport designed and constructed for the purpose of accommodating scheduled commercial service passenger operations.

C. At any time during the Lease Term, and on one or more occasions, the Developer may propose to relocate any Concession Location or Common Area to an alternate location within the New Terminal or to turn-back any Concession Location to the City. Any such modification to the Premises is subject to the City's reasonable discretion, and the City may reject any such proposal that the City finds is not in the best interests of the Airport and its tenants, passengers, employees and users.

D. The City may withdraw from the Premises any Concession Location that is the subject of five liquidated damages assessments within any rolling twelve (12) month period, including for example and without limitation failure to satisfy the performance and operating standards set forth in Article VI hereof. Prior to withdrawal, the City will provide Developer with an opportunity to cure the violations that resulted in the assessment of liquidated damages. Within thirty (30) days of the assessment of the fifth liquidated damages penalty, City will provide Developer with written notice in accordance with Section 2118 declaring City's intent to withdraw the Concession Location. Developer shall have ten (10) business days in which to present a proposed corrective action plan, including a schedule for remedying the underlying conditions that resulted in the assessment of liquidated damages, which corrective action plan may include, for example and without limitation, termination of the Sublease and relet of the Concession Location by Developer to another Operator. The Parties shall meet and confer as necessary to finalize a corrective action plan that is acceptable to each party. If Developer fails to initiate and complete the corrective action as set forth in the plan, the City may withdraw the Concession Location from the Premises and modify **Exhibit C** accordingly. Upon withdrawal, the City may relet the Concession Location, including for Foodservice, Convenience Retail, Specialty Retail, and/or Services to any Operator on such terms and conditions as may be established by the City. Developer shall include a termination provision in each Sublease consistent with this provision.

E. The Director of Aviation is authorized, on behalf of the City, to adjust the Premises and **Exhibit C** as provided in this Article I without further City Council approval.

ARTICLE II
CONCESSION RIGHTS AND RESPONSIBLITIES

SECTION 201. CONCESSION RIGHTS AND RESPONSIBILITIES. Developer's rights and responsibilities are as follows:

A. The City hereby grants to the Developer, subject to all the terms, covenants, and conditions of this Agreement, the exclusive concession rights to provide Foodservice, Convenience Retail, Specialty Retail, and Services to the public in the New Terminal, including Concession Locations of the types and sizes included in the Proposal (subject to modification on mutual consent of the Parties) for each respective location shown on **Exhibit C** in a First-Class Manner.

B. City agrees that, so long as Developer remains in compliance with the obligations of this Agreement, City will not lease or otherwise permit use of the New Terminal by any entity other than the Developer for Foodservice, Convenience Retail, Specialty Retail and/or Services without first providing Developer with the right of first refusal to provide the concession service(s). This exclusive right applies to the New Terminal as it exists on the New Terminal Opening Day; any expansion of the New Terminal during the Lease Term; and/or any additional satellite, concourse, or unit terminal at the Airport designed and constructed for the purpose of accommodating scheduled commercial service passenger operations during the Lease Term.

C. Developer shall use the Premises solely for the operation of the Concession Program as described and depicted in its Proposal (subject to modification on mutual consent of the Parties), along with related preparation, storage, and office spaces. No facilities other than those described in **Exhibit C** may be offered or made available without the prior written consent of the City.

D. Developer shall not make any unlawful, improper, or offensive use of the Premises contrary to Applicable Law. Developer further shall not use the Premises in such manner as to interfere with the safe and secure operation of the New Terminal and shall require the same of each Sublessee.

E. Developer and Sublessees shall have the right to use all public Airport areas as reasonably required for access to and egress from the Premises, provided Developer's Agents abide by the Airport Rules and Regulations and any other Applicable Laws. The City retains the right of ingress and egress over, though, and across the Premises, at any time, after giving Developer and the Operator, if any, reasonable notice.

F. Developer shall have the responsibility for the overall management of the Premises, including the management of Sublessees, business development, performance enhancement, and quality control, pursuant to the plans and programs proposed by Developer and accepted by the City and included herein by reference. A failure to fully implement all material plans and programs from Developer's Proposal may result in the imposition of Liquidated Damages and/or termination of this Agreement as provided herein.

G. Developer shall be responsible for overseeing the operation of and ensuring the equitable management of the loading docks on the A Concourse and the B Concourse of the New Terminal in the manner set forth in Section 402.D.

H. The Developer will act as the project manager for its own and Sublessees' design and construction programs, which will be coordinated with City. All designs and construction will meet the City's standards and will be subject to the City's permitting process. Additional information regarding the construction and permitting processes may be found in Article V.

The City reserves the right to require the Developer to provide its list of selected architects, interior designers, and construction managers for prior written approval by the City. Developer should supply a list of qualified MBE/WBE contractors to its Sublessees and to assist Sublessees with contracting with such businesses.

The Developer will be required to design and build-out the Food Court Common Area(s), including all shared circulation, seating, sanitation, and Back of House facilities. The Sublessees will be responsible for finishing their respective subleased spaces, including, by way of example, shelving, counters, merchandise displays, point-of-sale units, interior design, cooking equipment, cleaning facilities (three compartment sinks, mop sinks and storage closets for brooms, mops and chemicals), seating contained within the Sublessee Premises (if any), and utility hook-ups to the wires and conduits installed by the City. Notwithstanding the foregoing, however, the Developer has the ultimate responsibility for ensuring that all Concession Locations and Common Areas are open and operating in a First-Class Manner as defined herein on the New Terminal Opening Day in accordance with Section 512.

I. The Developer will have the right, but not the obligation, to finance, if necessary and desired, the development of Sublessee Premises. Such financing arrangements are between Developer and its Sublessees, and the City is not a party to such agreements. Notwithstanding the above, the City has the right to review and approve all financing agreements before their implementation. The City will not receive any revenues that result from financial transactions of this nature between Developer and Sublessees; neither does it accept any risk therefrom. If the Developer considers financing a Sublessee's Construction Costs or undertaking certain non-Base Building Work (if approved by the City), the Developer will not be entitled to reimbursement or other repayment for any costs or expenses it incurs in connection with any such financing or undertakings from any Rent or other revenues to be derived from the plan or to be otherwise payable to the City (e.g., through chargebacks or otherwise), nor may the Developer agree or arrange to tie-in or otherwise condition such Sublessee financing or undertakings on any other rights, privileges, allowances, or business terms and conditions granted to a Sublessee. The Developer will be prohibited from waiving any right to receive rents, fees, charges, or other revenues that may be paid or payable by any Sublessee, user, or occupant under its Sublease, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, and will similarly be prohibited from granting any rent abatements, extensions, or other modifications without the prior written consent of the City.

J. The Developer will manage the Concession Program including, but not limited to:

1. Monitoring the sales activity, pricing, customer service, hours of operation, merchandise, sales reporting, and payment of Rent.

2. Providing janitorial and custodial services for all Food Court Common Areas and other Common Areas within the Premises.

3. Ensuring that grease traps and vents are installed and checked/cleaned on at least a monthly basis in all applicable Foodservice concessions.

4. Ensuring and overseeing Sublessee compliance with Concession Program maintenance and performance standards.

5. Ensuring that all Sublessees are actively maintaining sanitation standards within their Sublessee Premises, including the use by all employees of gloves when handling food, and wearing of face masks and hair nets when preparing food, or more stringent requirements as put forth by the City. The wearing of face masks or hair nets is mandatory and is not subject to the personal choice of the Sublessee or individual employee.

6. Providing quality control audits and reports covering compliance with Agreement requirements, cleanliness of the facility, sanitation of the facility, timeliness of service, and quality of the products to the Sublessees, with copies to the City. The standards will be developed jointly by the City and Developer and shall not be subject to unilateral revision by either party.

7. Collection and disposal of all Sublessee-related refuse and garbage into City-provided dumpsters.

8. Collection and disposal of all recyclable materials into City-provided cardboard compactors or other containers, as appropriate, for the purpose of recycling; and

9. Timely payment of Concession Fees to the City, including all required rental reports, as specified in Article IV herein.

K. Developer shall manage the Concession Program as set forth in the Proposal, including for example and without limitation Tab 6 (Management/Operational Plan). Without limiting the generality of the foregoing, Developer shall employ, at no cost to City, at least one (1) full-time, dedicated, on-site General Manager, and one (1) full-time, dedicated, on-site Commercial Manager. The individuals Developer proposes to employ in these capacities are subject to the prior approval of the City. The General Manager, Commercial Manager or other senior representative shall be present at the Airport during normal business hours, Monday through Friday, and further shall be available twenty-four (24) hours per day to resolve any issues pertaining to the Concession Program and available to meet with the City at the Airport, and available at all other times by telephone, being able to arrive by car at the Airport within one (1) hour of being called in an emergency situation. The City reserves the right to require Developer to remove and replace any General Manager or Commercial Manager who, in City's reasonable judgment, does not perform up to the standards consistent with the fulfillment of Developer's obligations under the Agreement.

   The General Manager and Commercial Manager shall serve as a liaison with the City, and the Sublessees, with sufficient authority and support staff and appropriate equipment, supplies and means to manage and perform the development, management, maintenance, repair and other functions and obligations of the Developer with respect to the Premises, including, without limitation, the obligation to administer the Subleases and other contracts to which Developer is party, to monitor and enforce compliance by the Sublessees with their Subleases and the Agreement, each with authority to resolve operational issues short of executing an actual amendment to the Agreement or Sublease Agreement. The General Manager shall monitor the Premises to evaluate and enforce the Sublessees' compliance with their respective Subleases, including but not limited to compliance with the City's Rules and Regulations, and shall report in writing any noncompliance to the Sublessee(s) and the City, and their actions to remedy the non-compliance. The General Manager shall use commercially reasonable efforts to remedy any problem or issue raised by Airport patrons with respect to the operation of the Premises. The General Manager shall also continually monitor ACDBE performance to ensure both continued goal achievement, in accordance with Section 1201, as well as ensuring that ACDBE's have support available, when needed, to assist in their growth and compliance, and ensure that they are able to take advantage of opportunities present for their operation. Further, during any period in which construction is occurring on the Premises, whether by Developer or Sublessees, the General Manager shall ensure that MBE/WBEs are utilized to the greatest extent possible, but in any case, no less than the goals established in the RFP.

L. The Developer will develop and implement a joint marketing program the purpose of which is to enhance concession sales, the customer experience, and customer satisfaction. The joint marketing program shall include the elements set forth in Developer's Proposal at Tab 19 (Marketing Program). The Developer is expected to ensure that all Joint Marketing Fees due from Sublessees are reported

and paid for. It is recommended that Developer perform occasional audits to ensure that all fees due and payable are paid.

1. It is expected that Developer shall develop an organized plan before the beginning of each Lease Year that proposes the uses of funds and timing of expenditures for the forthcoming year. It is expected that Developer will be creative in determining the uses of the Joint Marketing Fund and will not rely solely on the same ideas on a repetitive basis. It is recommended, but not mandatory, that Developer seek input from Sublessees which are willing to share their ideas and evaluations of the proposed marketing efforts. These plans shall be reviewed by City for comments, but City may not direct Developer to exclude any planned idea, unless it is known to be a violation of a City Ordinance.

2. As part of the marketing program, the Developer must establish a barricade signage program for any unoccupied or incomplete concessions spaces. The designs for the barricades will be subject to the prior written approval of the City through its established permit process and must complement the interior design and finishes of the New Terminal and shall also supply information about both forthcoming concessions and other concession alternatives nearby. Solid white barriers with no marketing messages are not permitted for barricade signage.

3. The cost of establishing and maintaining Creative Spaces may not be charged to the Joint Marketing Fund.

4. The Joint Marketing Fund may be utilized to pay for a mystery shopping service in order to determine the performance of all Concession Locations, to give Developer and City a fuller understanding of performance, find general performance deficiencies, and to understand what additional training courses may be needed. However, the Joint Marketing Fund may not be utilized to pay for any training.

5. Developer will be responsible for providing an annual report to Sublessees and City regarding of the sources and uses of the Joint Marketing Fund, as well as the results from the promotional activities, to the extent they can be deduced. If there are funds remaining in the Joint Marketing Fund at the end of a Lease Year, then the Joint Marketing Fund Fee for the next Lease Year for every Sublessee will be reduced by the proportional share of the remaining fund. If there is a shortage in any year, it shall be the responsibility of the Developer to cover the shortage until such time as the Joint Marketing Fund balance becomes positive.

M. The Developer will be required to attend all meetings called by the City that relate to the Concession Program with at least two (2) business days' notice (or less, in the case of emergencies).

N. The Developer has proposed a Concession Layout Plan in the Proposal at Tab 11 (Location & Sublease Planning). Upon the Effective Date, the City and Developer shall review the Concession Layout Plan and come to an agreement regarding the uses of the available space, the configuration of spaces to be developed, and desired Sublessees for each space to be operated. The Developer is not under a specific obligation to provide any Operator with a Concession Location if a mutually agreeable Sublease cannot be reached.

O. The Developer shall prepare and submit for City review and approval a standard-form Sublease, with modifications as necessary to account for the different concession services performed by Sublessees. Developer may request City review and approval of changes to the standard-form Sublease during the Lease Term. In addition, Developer will seek and obtain City consent to execute each Sublease, which City review shall be limited to considering the permitted uses in the Sublease and determining whether the Sublease is consistent with the approved standard form. Each Sublease shall include the rights and obligations required by this Agreement to be passed to Sublessees and shall provide the right on the

part of the City to assume Developer's rights and obligations under the Sublease upon termination or expiration of this Agreement.

P. In the event that the USSF should award the City the rights to hold one or more soccer matches within the Tournament, Developer will be responsible to assign a highly visible Concession Location for FIFA to operate a retail store ("**FIFA Store**") for the period commencing six (6) months before the Tournament until one (1) month after the Tournament concludes.

1. A contract between Developer, the City, and FIFA will be executed for the temporary occupancy of the FIFA Store. The contract may be provided by FIFA.

2. Developer will be permitted to charge a rent commensurate with other Specialty Retail stores in the New Terminal. FIFA shall not be charged the Joint Marketing Fund Fee but may be required to pay all other fees which would be normally charged from the FIFA Store's commencement date through the day on which FIFA ceases retail operations. Sales from the FIFA Store shall be included in the calculation of Operator Gross Receipts as provided herein, and Rent from the FIFA Store shall be included in the calculation of the Concession Fee as provided herein.

3. The City recommends (but does not require) that Developer identify a Concession Location in the A Concourse of the New Terminal for the FIFA Store. This space may be used as Creative Space until the period when FIFA will need to occupy it. Alternately, Developer may place other Sublessees in the identified Concession Location, so long as the Sublessee has vacated the space in time and in condition to be improved by FIFA. Developer shall assist FIFA in any way necessary to expedite FIFA's construction plans (if any). The Parties acknowledge that the space for the FIFA Store will most likely not be needed until at least spring 2026. If there are commercially useful activities which can be conducted in the identified Concession Location, such as pop-up shops for small and local vendors, then the City recommends that Developer maximize the revenue potential of the space.

4. Developer shall not be responsible for enforcing contractual or Airport rules on FIFA. If Developer observes any violation of these rules, so long as it does not cause any immediate danger to the City, the Developer, any Sublessees or their employees (including FIFA employees), or the public, Developer shall notify City promptly of the issue and the circumstances surrounding it. This shall be Developer's only duty regarding enforcement of contractual operational rules.

5. In the event that FIFA does not leave the space in the broom clean standard required of other Sublessees, Developer shall have the responsibility to return the space to leasable condition. Developer is permitted to invoice City for any costs incurred, which must be substantiated by receipts in order to get reimbursement. The City will not pay for any incurred expense, without corresponding receipts. Any amounts due to Developer will be provided as a credit memo against forthcoming Concession Fee due to City from Developer.

SECTION 202. INCORPORATION OF RFP AND PROPOSAL. The RFP and any written clarification thereto, and Developer's Proposal are incorporated and made a part hereof by reference. Developer shall be obligated to meet all material specifications described in the RFP and all plans and programs recommended by Developer in its Proposal pertaining to the Concession Program as accepted by City; provided, however, that in the event an express provision of this Agreement is in conflict with any provision of the RFP and/or the Proposal, this Agreement shall govern and control unless City deems that the provision in the RFP and/or the Proposal offers a higher level of service to City or the traveling public than indicated in the conflicting provision of this Agreement, in which case such provision in the RFP and/or Proposal shall govern and control.

Developer shall be required to keep and abide by all material commitments and promises that appear in the Proposal. Developer was selected as a result of the commitments made in the Proposal. As a result, failure to

perform any such commitment or promise which was accepted by City shall be deemed a default of this Agreement and shall subject Developer to assessment of Liquidated Damages as provided in Article XX.

The Parties acknowledge and agree that the needs of the Airport and its passengers, employees and users may change over the Lease Term and that, as a result, Developer may make corresponding changes in the Concession Program, with the City's approval. Notwithstanding the provisions of this Section 202, Developer shall not be held to a plan, program, standard or requirement of the RFP or Proposal if the Parties have expressly agreed to adjust, replace or eliminate such plan, program, standard or requirement.

ARTICLE III
TERM OF AGREEMENT

SECTION 301. TERM. This Agreement, and all rights and obligations of the Parties as set forth herein, shall be effective as of the Effective Date, which date shall be _____ ___, 2021 (to be hand-written to reflect the effective date of the City Council ordinance approving this Agreement). The Design and Construction Phase of this Agreement shall commence upon the Effective Date and shall continue until midnight on the Day before the New Terminal Opening Day. The Operational Phase, which shall last for a period of fifteen (15) years, shall commence at 12:00 a.m. local time on the New Terminal Opening Day and shall terminate at 11:59 p.m. local time, on the fifteenth anniversary of the New Terminal Opening Day, unless the Lease Term is extended, or the Agreement terminated, as permitted herein.

SECTION 302. SURRENDER OF POSSESSION. No notice to cease operations or to quit possession of the Premises at the Expiration Date shall be necessary. The Developer covenants and agrees that at the Expiration Date, Developer will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises.

SECTION 303. HOLDOVER.

A. City's decision. The City may permit Developer to holdover beyond the expiration of this Agreement, subject to the terms and conditions set forth herein, in order for the City to conclude a solicitation process or to prepare for a follow-on concession tenancy either with Developer or such other firm or firms selected by the City. The City will notify the Developer in writing of the City's offer of a holdover tenancy. Within thirty (30) days of receipt of the City's notice, the Developer shall notify the City in writing as to the Developer's acceptance of said holdover tenancy. If the Developer fails to so notify the City in writing within said thirty (30)-day period, the Developer shall be deemed to have rejected the City's offer of holdover tenancy.

B. Holdover time period. The City, in its sole discretion, may permit the Developer to hold over and operate from, at and upon the Premises, for a period not to exceed one calendar year from the end of the Term agreed to by the Developer and the City. Nothing herein shall preclude the City and Developer from extending the Lease Term as provided in Section 2105.

C. Holdover terms.

1. Month-to-month tenancy. If the City permits the Developer to holdover on or at the Premises, such a holding over shall not be deemed a renewal or extension of the Agreement, but shall create a month-to-month tenancy on the same terms and conditions of the Agreement in effect immediately prior to the commencement of the holding over (hereafter the "**Holdover Start**"), unless modified as deemed necessary by the City. Such modifications may include, but are not limited to, the Developer's obligation to (1) pay to the City the rents, fees and charges in effect at the Holdover Start, (2) furnish a sufficient Payment and Performance and Maintenance Bond and

adequate insurance coverage in accordance with the terms of the Agreement in effect at the Holdover Start and (3) provide defense, release, indemnity and liability protection to the City as required by the terms of the Agreement in effect at the Holdover Start.

2. Termination. The City may, upon sixty (60) days written notice, after the Holdover Start, notify Developer that the Holdover period shall be terminated. Developer agrees that it will follow the provisions of this Agreement upon the time and date specified by the City in such notice.

3. No Other Holdover Permitted. Other than as specified as in Section 303.C. Developer may not otherwise remain in the Premises for any reason, beyond the expiration date set forth in Section 301, above. This Agreement will not be extended for any reason, and City will seek to tender a new Agreement to Developer or an alternative Developer, through whatever means are available or required during the period before the expected expiration date.

ARTICLE IV
PAYMENTS AND FEES; SUBLESSEE FEES

SECTION 401. CONCESSION FEE PAYMENTS.

A. No Concession Fee during D&C Phase. From and after the commencement of the D&C Phase, until the New Terminal Opening Day, Developer shall pay no Concession Fee, or any other rent or fees of any type to the City. However, Developer will be responsible for paying for all utilities which it consumes which may be separately metered (for example, in an office).

B. Concession Fee during Operational Phase. Beginning on the commencement of the Operational Phase, Developer shall pay the Concession Fee to the City.

C. Concession Fee Formula. Developer shall pay the City the greater of a percentage fee or the Minimum Annual Guarantee. The percentage fee shall be eighty percent (80%) of all Rent up to $16,000,000, and eighty-four percent (84%) of all Rent above $16,000,000. As a limited exception to the foregoing, Developer shall pay the percentage fee only, without MAG, prior to May 1, 2023, or, if the New Terminal Opening Day is later than May 1, 2023, MAG shall apply beginning on the New Terminal Opening Day.

D. At the beginning of each Lease Year, the City shall provide Developer with the estimated number of enplaning passengers, based on the prior Lease Year's actual number of enplaning passengers. The Developer will pay MAG based on the estimated number of enplaning passengers, on a monthly basis, no later than the 5th Day of each month, using the following formula: Estimated total enplaned passengers times the MAG per enplaned passenger, divided by 12.

E. Each month by the 25th Day, the Developer shall prepare and send to City a monthly report, summarizing the Operator Gross Receipts and Rents received from Sublessees, and the calculation of the Concession Fee due to City for the previous month. The report will include the detailed calculation of the Concession Fee, and calculate any percentage fee due to City, over and above the MAG.

At the end of each Lease Year, City shall provide Developer with the actual number of enplaning passengers for such year, as reported to the City by airlines serving the Airport. Developer shall provide City with a reconciliation of the Concession Fee, based on the actual number of enplaning passengers, including a true-up of the MAG, and the annual calculation of the Concession Fee based on the total Rent received by Developer for the entire Lease Year.

F. If, during the Lease Term, the number of enplaned passengers at the Airport decreases by more than eighty (80) percent, measured on a monthly basis compared to the same month of the previous year, the Parties shall abate the MAG, by the same percentage as the decrease in enplaned passengers, until such time as the year-over-year decrease in enplaned passengers is less than eighty percent.

SECTION 402. OTHER OCCUPANCY FEES NOT PART OF OPERATOR GROSS RECEIPTS. The Developer or its Sublessees are responsible for any or all the following applicable fees and charges.

A. Utilities. City shall furnish utilities to the Premises. Developer may pass the costs of all utilities for the Premises to Sublessees, without mark-up. Developer agrees that all other utility services required for the Premises during the Lease Term must be obtained by direct connection to the distribution system of the utility company and paid for by Developer or Sublessees. In the event Developer leases space or is granted rights or privileges where such direct connection to the distribution system of the utility company is not possible, then Developer may be permitted to receive service through City's airport system subject to a charge applicable to all airport users of like services. Developer shall pay monthly for such service upon receipt of a bill from City. Should the City determine that it is in its best interest and in the best interests of its tenants for the City to pay a unified utility bill and invoice it tenants for their individual utility usage, City retains the right to require Developer to reimburse City for utility usage.

B. Common Area Maintenance ("**CAM**"). The Developer will provide CAM services for all Common Areas within the Premises. CAM fees are to be separately stated on monthly invoices for Rent or separately billed by Developer to the Sublessees and assessed at cost with no Developer mark-up. Specific costs attributable to the maintenance of a Food Court will only be borne by those Sublessees in that Food Court, and not by Sublessees who operate concessions in other parts of the Terminal. Developer shall be required to provide an annual reconciliation to its Sublessees, which includes a reconciliation and true-up of estimated costs to actual costs, and a summary of receipts and expenditures by category to its Sublessees and the City.

C. Joint Marketing Fund. The Developer will develop and implement marketing and promotions programs to enhance concession sales and customer satisfaction as shown in Section 201.J. Expenditures for the marketing and promotions program may be funded through a percentage of Operator Gross Receipts fee charged for each Subleased Location. The Developer may not apply any mark-up to the marketing fees charged to the Sublessees. The maximum allowable marketing and promotions fee shall be 0.5% of Operator Gross Receipts and shall be separately stated on Developer's invoices to its Sublessees or separately invoiced.

D. Distribution and Loading Docks. Developer shall be responsible for the build-out of the Primary Loading Dock, located on the A-Concourse and accessible from the New Terminal roadway, as well as the operation and management of both the Primary Loading Dock for the acceptance of all deliveries from external sources, and the Secondary Loading Dock, located on the B-Concourse, for deliveries by Developer or its third party operator, to B-Concourse Sublessees.

1. Developer shall develop and operate the Primary Loading Dock and Secondary Loading Dock in the manner set forth in Developer's Proposal at Tab 18 (Delivery Management Plan). Developer shall, in consultation with the City, develop a specific plan for the development and operation of the Loading Docks and submit such Loading Dock Operational Plan to the City for review and approval. The Loading Dock Operational Plan shall address, for example and without limitation, the security of the Loading Docks, consistent with the Airport Security Plan and the rules and directives of the Transportation Security Administration. City may request changes in the Loading Dock Operational Plan during the Lease Term to address, for example and without limitation,

safety, security, and efficient operations of the New Terminal. In the absence of a request by the City, Developer shall review the Loading Dock Operational Plan no less than once per Lease Year and submit any proposed changes to the City for review. The Airport Director may approve changes in the Loading Dock Operational Plan without amending this Agreement.

2. Developer's capital investment in the Loading Docks shall not be charged to the Sublessees.

3. The Primary Loading Dock shall accept all deliveries to the New Terminal, including, but not limited to: deliveries by the United States Postal Service, United Parcel Service, FedEx, DHL, Amazon and similar package delivery services; product delivery by distributors and vendors, including for example baked goods and fresh produce; newspapers and magazines; and emergency deliveries, including for example when a Concession Location has run out of a product or ingredient.

4. Developer has the option of either managing the Loading Dock itself with its own employees, or subcontracting Loading Dock management to a third party. In either case, the managing firm for the Loading Docks shall be referred to herein as the "**LD Manager**".

5. The LD Manager shall maintain the Loading Docks in a neat and orderly condition, ensuring that sanitation standards are consistently applied. All trash, recycling and waste products related to the Loading Dock operation must be placed in appropriate containers and frequently removed to dumpsters.

6. The Developer shall construct, and the LD Manager shall operate and maintain, dry and cold storage, to include frozen storage, with sufficient capacity to accommodate expected deliveries during the Lease Term.

7. Developer will not have total management responsibility for the Loading Docks until five days before the New Terminal Opening Day. Until that time, Developer shall work with the City's Project Manager for the construction of the New Terminal, or their designee, to coordinate deliveries, pick-ups, and movement of products and supplies from the Loading Docks to their destination. Pursuant to the Construction Schedule found in **Exhibit D**, Developer will be given adequate time to finish the Loading Docks area per Developer's plan, as approved by City.

8. During the Design and Construction Phase, Developer will be responsible for managing the acceptance of deliveries of merchandise to be used to stock all Concession Locations as part of the Concession Build-out. No deliveries should be permitted to remain on any Loading Dock for an unreasonable amount of time, as determined by the Developer.

9. Developer shall be informed by City of the date when Developer will assume the responsibility for the acceptance and processing of certain mail, small packages, and supplies for all non-concession Airport tenants. LD Manager will be responsible for the processing of such items to a secure, designated lock box for each non-concession Airport tenant and notifying such non-concession Airport tenants of deliveries, pursuant to the following requirements:

    a. Developer has the option of either delivering product, supplies, mail, and packages to the Sublessees, or requiring Sublessees to pick up their deliveries at the Primary Loading Dock or Secondary Loading Dock, or a combination thereof, based on whichever method is most efficient and convenient for the Sublessees. At no point shall any Sublessee be expected to carry products or merchandise from the Primary Loading Dock to the Secondary Loading Dock (or vice versa, in the case of merchandise returns). No merchandise may be transported through the passenger walkway connecting A-Concourse to B-Concourse at any time unless advanced permission is given by City on a case by case basis.

b. Developer, along with LD Manager, if it is a third party, shall prepare a plan so that processing of mail or small packages for any non-concession Airport tenant will occur no more than four (4) hours after receipt at the Primary Loading Dock (except for evening deliveries, where the material shall be processed early the next calendar day). If processing cannot be completed until the next day, due to late arrival, the delivery must be secured by the LD Manager.

c. If the delivery is destined for a Concession Location, and if LD Manager is delivering the product, the same four (4) hour rule shall apply.

d. If certain Sublessees are required to pick up their deliveries at a Loading Dock, then the LD Manager shall notify the recipient of the availability of their merchandise either at the Primary Loading Dock, or the Secondary Loading Dock, as is most appropriate, as soon as practical after the delivery process begins (or immediately prior to that moment), so that the delivered materials may be promptly removed from the Loading Dock by the Sublessee. If a Sublessee does not pick up such deliveries within a reasonable time frame as set by the Developer, the LD Manager must hold and secure those deliveries, which may result in an additional charge to the Sublessee.

e. If certain B-Concourse Sublessees are required to pick up deliveries from the LD Manager, then the LD Manager shall move the materials from the Primary Loading Dock to the Secondary Loading Dock according to a pre-planned schedule and secure such materials until they are accepted by Sublessee representatives within a reasonable time frame of notification. If a Sublessee does not pick up such deliveries within a reasonable time frame set by the LD Manager, the LD Manager much hold and secure those deliveries, which may result in an additional charge to the Sublessee.

f. If the LD Manager receives clearly-marked urgent, delicate, valuable, or fragile item for a Sublessee, it shall process, deliver, or arrange the pick-up within one-half (1/2) hour of receipt at the Loading Docks. For tenants who do not regularly receive products delivered by the LD Manager, the items shall be securely stored until the tenant picks them up. In such a case, the LD Manager shall inform the tenant that they have a delivery waiting.

g. Within its Loading Dock Operational Plan, LD Manager must prepare recommendations for the procedure for immediate delivery to the addressee of clearly-marked urgent, delicate, valuable or fragile items within one-half (1/2) hour of the acceptance of the delivery from any delivery firm. If such urgent, delicate, valuable, or fragile item is for a Sublessee and the LD Manager does not provide delivery service, then LD Manager shall be required to inform said Sublessee of the arrival of such item at the earliest possible moment. If the Sublessee is located on the B-Concourse, shall inform Sublessee of when they will be able to pick up the merchandise from the Secondary Loading Dock, taking into account transportation time by the LD Manager to the Secondary Loading Dock, and shall, if necessary, secure the merchandise on the Secondary Loading Dock in a safe manner, maintaining the item in the same condition it arrived in, until pick up by the Sublessee.

h. The LD Manager shall operate the Loading Docks throughout the day, seven (7) days per week, 365/366 days per year, from as early in the morning as is required for the receipt of merchandise, until the end of the standard business day (5:00 p.m.) or later, as scheduled by the LD Manager. Exceptions to these operating hours' requirements may be requested by Developer, at its option, which permission shall be granted, absent a justified reason for keeping the Loading Dock(s) open. It is recommended that LD Manager identify one or more people who can arrive at the Airport within thirty (30) minutes to accept an off-hours delivery if the delivery is urgent, or there is a justified reason for a delivery to occur outside of regularly

scheduled hours of operation. The LD Manager shall designate an employee to be on call to open the Loading Dock(s) outside of normal operating hours in the event of an emergency.

i. The LD Manager must sort and process mail securely into the designated lock box for each Sublessee and non-concession tenant.

j. Developer may assess the proportionate cost of LD Manager's services for operations relating to Sublessees only (thereby excluding the cost of providing receiving and processing services to non-concession Airport tenants), based on their usage of LD Manager's services. The charges to Sublessees must be clearly denoted as a separate line item on the Sublessee's monthly payment invoices. The monthly invoicing to Sublessees will be estimates calculated to reimburse the Developer for its costs to provide the services, without markup. City will do periodic audits of these billings. The chargeback methodology, including the steps that Developer will take to exclude costs relating to receiving and processing of non-concession-related product and mail, for example, must be clearly established in Developer's Loading Dock Operational Plan.

k. By the second March 1st after the New Terminal Opening Day, and every March 1st thereafter, Developer shall provide to the City, without request, a report which summarizes the total estimated amounts received from Sublessees for Loading Dock management services (and delivery, if applicable) during the previous Calendar Year, compared to the cost of providing the services.

l. If the estimated fees collected are greater than the cost of supplying the services, then Developer shall credit or refund the excess estimated billings and reduce the estimated monthly fees for the following year.

m. If the estimated fees collected are less than the cost of providing the services, then Developer shall be permitted to increase its charge for Loading Dock management and delivery services based on the projected operating costs for the next year, and recover the shortfall from Sublessees.

n. LD Manager has the right, but not the responsibility, of scheduling delivery times with suppliers, and, if a schedule is established, refusing to accept an out-of-order/off-scheduled-time delivery.

o. Distribution of product to Concession Locations and/or Loading Docks for Sublessees that elect to pick up deliveries, will be the sole responsibility of the LD Manager or Sublessee, pursuant to the approved Loading Dock Operational Plan. All deliveries of merchandise and supplies shall be through the Loading Dock, and none shall take place through other means. Developer shall be responsible for securing the permits, training, and equipment for vehicles and drivers to operate on the Airfield in order to facilitate movement of delivered materials from the Primary Loading Dock to the Secondary Loading Dock or other storage locations on the Airfield level. Developer may provide delivery services through a third party, provided at cost without markup to Sublessees. Should Developer choose to provide delivery services with its own employees, it shall propose a methodology for calculating the delivery cost for the approval of the City, which approval shall not be unreasonably withheld. The rate shall not be changed without the approval of the City.

p. Deliveries to Sublessees and others must be made on a non-discriminatory basis, such that one firm is not prioritized over all others. If evidence of this practice is found by City, Liquidated Damages may be assigned to Developer.

SECTION 403. ADDITIONAL FEES AND CHARGES. The Developer shall pay City additional fees and charges under the following conditions:

A. In the event the Premises, together with all other land located within the Airport, is subjected to a Declaration of Covenants and Restrictions, which includes, among other things, a provision for assessment of charges for maintenance of common properties and/or for provision of common charges to all land within the Airport, Developer shall pay, in addition to any Concession Fee, its proportionate share of such charges.

B. If the City has assessed Liquidated Damages in accordance with Article XX.

C. If the City has paid any sum or sums or has incurred any obligations or expense for which the Developer has agreed to pay or reimburse City.

D. If the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect, or refusal of Developer to perform or fulfill any of the conditions of this Agreement.

1. Such payments shall include all interest, costs, damages, and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees, charges, and rental thereafter due by the Developer to the City hereunder. Every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally part of the basic fees, charges, and rental, as set forth herein.

2. For all purposes under this sub-Section 403.E, and in any suit, action or proceeding of any kind between the Parties, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be *prima facie* evidence against the Developer that the amount of such payment was necessary and reasonable.

SECTION 404. REMITTANCE OF PAYMENTS. All remittances shall be made payable to the "City Treasurer" and forwarded to:

City of Kansas City, Missouri
Aviation Department Lockbox
P.O. Box 210513
Kansas City, MO 64121-0513

All payments hereunder shall be paid to City's payment address, or at such other place as City may from time to time designate in writing. The City may also, at any time, require Developer to make electronic transfer payments. Should City so desire, City will provide Developer with the appropriate electronic address, and thereafter, Developer will be required to make all payments electronically.

SECTION 405. PROMPT PAYMENT. The Developer covenants and agrees to pay promptly all Concession Fees, lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses and permits, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, assessments, excises, fees or charges to become delinquent.

The above paragraph shall appear in all Subleases signed by Developer.

SECTION 406. REPORTS. Developer shall provide the City, in a form and detail satisfactory to the City, a true and correct statement of monthly Operator Gross Receipts along with the cumulative annual Operator

Gross Receipts for the Calendar Year (regardless of the Fiscal Year of the Developer). Said monthly statement shall be due by the 25th Day of the following month. Statements of Operator Gross Receipts shall be certified as correct by an officer of the Developer. Developer shall use the report form proposed in its Proposal, as approved by City, and which may be found in **Exhibit F**: Form of Monthly Report. A copy of this report shall be provided with the payment required in Article IV. An electronic version of this report shall be emailed to the Director or other such email address as specified by the City, by the 25th Day of each month. Note that a separate section should be available in the Monthly Report for reporting of Liquidated Damages assessed and collected. Further note that late submissions of any report to the City may subject Developer to Liquidated Damages, pursuant to this Agreement.

SECTION 407. ANNUAL AUDIT. Within ninety (90) days after the close of each Lease Year hereunder, or portion thereof, Developer shall furnish to the City a sworn statement certified by an independent Certified Public Accountant, selected by the Developer, showing the total Operator Gross Receipts collected at the Airport by the Developer and summary of the payments made by Developer to City during the Lease Year. If Developer has overpaid the City in any Lease Year, then the amount of the overpayment will be credited against payments due for the following Lease Year, spread equally over a period of no less than six (6) months, unless City shall specify another period. If the Developer has underpaid the City, Developer shall pay the amount of the underpayment by the April 30 of the year following the timely submission of the Annual Audit to City. This date may be adjusted by City at its option, depending upon when the Annual Audit is received by City. Note, however, that late submissions of any report to the City may subject Developer to Liquidated Damages, pursuant to this Agreement.

SECTION 408. INTERESTS, PENALTIES AND LATE CHARGES. If Developer fails to pay City any amount due City under this Agreement, City shall charge a service charge of one and one-half percent (1.5%) per month if same is not paid and received by the City on or before the twentieth (20th) day of the month following the month in which said payments are due. Developer agrees to pay reasonable costs and expenses incurred by the City in collection of delinquent amounts, including service charges.

SECTION 409. PAYMENT BOND AND PERFORMANCE AND MAINTENANCE BOND. The Developer shall furnish Payment Bond and a Performance and Maintenance Bond to the City in a form substantially similar to that presented in **Exhibit A** – Payment Bond and Performance and Maintenance Bond.

The Payment Bond shall reflect the amount of Developer's Capital Investment required to perform the Work as provided herein. The Payment Bond shall be kept in full force and effect during the D&C Phase, and thereafter until the Developer completes its work and provides the City with the close-out documents as set forth in Section 507. The Performance and Maintenance Bond shall reflect the annual amount required to guarantee the payment of Concession Fee and the performance of Developer's other obligations as provided herein. The Performance and Maintenance Bond shall be kept in full force and effect during the Lease Term, and thereafter until all obligations of the Developer are fulfilled.

At least thirty (30) days prior to the expiration of any annual renewable bond, Developer shall submit to the City a new bond renewal in accordance with the terms and conditions of this Agreement. If any said bond coverage is cancelled or reduced, Developer shall, within five (5) days after the date of such written notice from the bank or surety of such cancellation or reduction in coverage, file with the City evidence of bond renewal showing that the required bond has been reinstated or provided through another bank, Surety Company or companies. Developer shall also require that all Sublessees maintain sufficient Payment and Performance Bonds to ensure payment of their obligations to Developer and the City. Developer's failure, at any time during the Lease Term, to maintain the bond coverage required in accordance with the terms and conditions of this Agreement shall constitute an event of default in accordance with Article XIII, subject to cure in accordance with Section 1304. Alternatively, the City may secure a bond as required herein, and the Developer shall reimburse the City for same with interest thereon on and service charges, as provided for herein.

City shall not be required to keep the Payment Bond and the Performance and Maintenance Bond or any proceeds thereof, as applicable, separate from its general accounts. Any proceeds of the Payment Bond and the Performance and Maintenance Bond is and will remain the sole and separate property of City until actually repaid to Developer, said sum not being earned by Developer until all provisions precedent for its payment to Developer have been fulfilled. If Developer performs all of Developer's obligations hereunder, the Payment Bond and the Performance and Maintenance Bond, or the proceeds thereof, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Developer (or, at City's option, to the last assignee, if any, of Developer's interest hereunder) within sixty (60) days after the expiration of the Term, and after Developer has vacated the Premises. No trust relationship is created herein between City and Developer with respect to the Payment Bond and the Performance and Maintenance Bond or any proceeds thereof.

SECTION 410. ACCOUNTING RECORDS. Developer and its Sublessees shall keep, throughout the entire term of this Agreement in the case of Developer, or throughout the entire term of the Sublessee's Agreement or any extension thereof, all books of account and records customarily used in similar type of operation, and as may be reasonably required by the City, in accordance with GAAP. Such books of account and records shall be retained and available for such period as provided herein unless otherwise reduced by the City. The City, at all times throughout the term of this Agreement or any extension thereof, and for up to three (3) years following termination, shall have the right to audit and examine, during normal business hours, all such records and books of account relating to the Developer's operation hereunder, including Sublessee records and books of account provided that the Developer or Sublessee shall not be required to retain such books of account and records for more than three (3) years after the end of each Lease Year of this Agreement.

Developer shall install and use or cause to be installed and used at the Premises, cash registers, sales slips, invoicing machines and other automatic accounting equipment or devices required to record properly and accurately the Operator Gross Receipts on all sales, services, and other business transactions made by Developer under this Agreement. Electronic ordering is expressly permitted for all concessions, so long as customer can obtain a receipt from a point in the Airport or via e-mail, and sales amounts through said electronic means are auditable by City, by request.

SECTION 411. EARNINGS TAX. All City earnings tax, payable out of earnings from revenues generated under this Agreement, must be withheld, and paid directly to the City by the Developer and its Sublessees. Such withholdings and payments will be made a condition of all contracts entered into by the Developer in connection with revenue generated and/or work performed under the terms of this Agreement, and such earnings tax payments by the Developer and its Sublessees shall be confirmed by the City's Division of Revenue.

SECTION 412. RIGHT TO AUDIT. The City Auditor, the City's Internal Auditor, the City's Director of Human Relations, and the City and their hired Agents shall have the right to audit this Agreement and all books, documents and records relating thereto. Developer and all Sublessees shall maintain all their books, documents and records relating to this Agreement during the term of their agreement and for three (3) years after expiration. The books, documents, and records of Developer in connection with this Agreement shall be made available to the City within ten (10) days after the written request is made. Records must be made available in Kansas City, Missouri, at a location mutually agreeable to City, its Agents involved, and Developer or Sublessee. If City Agents are required to travel outside Kansas City in order to audit these books, Developer or Sublessee shall be liable for all costs, including airline travel (or mileage), hotels, rental cars, meals, and related expenses, which shall be paid within fifteen (15) days of these expenses being billed to Developer or Sublessee.

The final authority for the determination of what books, documents and records are required shall rest with the City. In the event that any inspection or audit made by or on behalf of the City discloses any discrepancy in any statement(s) of Developer's or Sublessee's Operator Gross Receipts and/or in the amount of any sums of money owed, the Developer or Sublessee shall forthwith pay the sum of money owed to the City plus an

interest charge of one-and-one-half percent (1.5%) per month to the City to the date payment is made to the City.

SECTION 413. NET AGREEMENT. This Agreement shall be without cost to the City. It shall be the sole responsibility of the Developer, or Sublessees, to equip, furnish, stock, keep, maintain, repair, and operate the facilities and utilities required under this Agreement, without cost to the City.

ARTICLE V
CONDITION AND IMPROVEMENT OF PREMISES

SECTION 501. DEVELOPER CONSTRUCTION AGREEMENT. No improvements, structures, facilities, alterations or additions to the Premises will be made by Developer without prior written approval of the Director. This approval shall be in the form of a separate tenant construction agreement through the Aviation Department's Engineering Division signed by City and Developer. The tenant construction agreement may have requirements for payment and performance bonds, compliance with the Tenant Design Standards, prevailing wage, MBE/WBE participation, and FAA review, among other conditions. The Parties acknowledge and agree that the Missouri Prevailing Wage Law (Chapter 290, Missouri Revised Statutes) and applicable wage order for Platte County shall apply to the Work.

SECTION 502. CONSTRUCTION INSTRUCTIONS. Attached as **Exhibit E** are the Construction Instructions by the City's contractor overseeing the building of the New Terminal. These same rules will apply to Developer's and Sublessee's construction efforts.

SECTION 503. INITIAL CONDITION OF PREMISES. As of the Effective Date, the New Terminal is under construction. Immediately upon the Effective Date, City shall provide, and instruct City's Agents to provide, access to plans, drawings, schedules and other documents concerning the New Terminal to Developer, Developer's Agents and Developer's Architects/Engineers that are necessary or appropriate for Developer to plan and prepare for the Capital Improvements. Also upon the Effective Date, City shall provide Developer, Developer's Agents and Developer's Architects/Engineers with supervised access to the New Terminal construction site as may be necessary to perform such on-site inspection, survey and related work in preparation for the Capital Improvements. The Parties acknowledge that areas of the New Terminal construction site will not become available for Developer or Sublessee construction prior to the dates shown on the Construction Schedule, provided by City's contractor, and shown in **Exhibit D**, or such alternate dates as may be communicated by the City to Developer. City agrees to make the Premises available to Developer, or Sublessees responsible for Capital Improvements to Concession Locations, at the earliest practicable time after completion of the Base Building Work, when a Concession Location has been completed to a Shell Condition, and when the start of Capital Improvements for Build-out will not interfere with the safe, secure and orderly construction of the New Terminal.

A. **Exhibit D** includes a marked section in the New Terminal in which will occur the "Baggage Handling Blackout." **Exhibit D** also contains the expected schedule for the Baggage Handling Blackout. During the blackout period, which is for system testing of the new baggage system, within the established zones, there may be no cutting or drilling through the concrete slabs.

When received from City, all facilities shall be in Shell Condition. The Developer or Sublessee shall be required to make all connections into utility services. The Developer or Sublessee shall be responsible for securing all applicable permits in order for the Developer or Sublessee to conduct its business on the Premises. Developer shall ensure that they, and Sublessees have secured all necessary permits, and the Developer shall furnish to the City copies of all such permits.

SECTION 504. INITIAL CAPITAL IMPROVEMENTS. Upon the delivery of the Premises, or portion thereof, to Developer by the City, Developer or its Sublessee will complete, at its own expense, such capital improvements as are necessary to develop the Premises to be substantially similar to the proposed design,

appearance, layout and other specifications as identified in Developer's Proposal, including without limitation Tab 21 (Design), and the plans submitted by Developer in accordance with this Article V, including but not limited to doors, storefronts, canopies, walls, partitions, fixtures, equipment, floors, ceilings, interior design and décor, and external appearance and décor (collectively, the "**Capital Improvements**"). Developer and its Sublessees will take affirmative steps to prevent any leakage of fluids through the floor or cracks or expansion joints therein and shall be required to install floor liners that reach at least six inches (6") above the intersection of the floor and wall in all locations with running water or drains, pursuant to the Tenant Design Standards. All Capital Improvements shall conform with the terms and conditions of the Tenant Design Standards, attached hereto as **Exhibit B** and made a part hereof and as may be amended from time to time by the City without further City Council approval. All materials, finishes, furniture, equipment, and fixtures shall be of new manufacture, except for acceptable reuse of materials in accordance with an approved sustainability program which reuses construction materials, and will follow all Applicable Laws, including but not limited to the Americans with Disabilities Act ("**ADA**").

SECTION 505. TITLE TO IMPROVEMENTS. All Capital Improvements constructed or installed by the Developer upon the Premises shall become the property of the City upon termination or expiration of this Agreement, without compensation to the Developer. Developer shall, within seven (7) calendar days following the Expiration Date, remove FFE, except as may be mutually agreed by the Parties, and return the Premises in a broom clean condition, ordinary wear and tear excluded. In the event the City determines that any Concession Location or Common Area is to be used after the Expiration Date for a purpose other than concession services, the City may require Developer to remove any or all Capital Improvements and restore the Concession Location or Common Area to its Shell Condition, at no cost to the City. Developer shall confer upon Sublessees the same rights and obligations as provided herein.

SECTION 506. MIDTERM REFURBISHMENT. Subleases with term greater than six (6) years will require a mid-term refurbishment of at least 15% of the original Construction Cost for the Concession Location. This is in addition to any maintenance requirements undertaken by the Developer and/or Sublessees or any re-leasing or rebranding strategies undertaken by the Developer.

SECTION 507. COST OF CAPITAL IMPROVEMENTS. Within one hundred and eighty (180) days of the completion of the Capital Improvements or Midterm Refurbishments, Developer shall provide to the City, in a form and detail satisfactory to the City, a true and correct statement of the actual Construction Costs of all Capital Improvements. The statement of Construction Costs shall only include Eligible Costs and shall be certified as correct by an officer of Developer or Sublessee. If Developer or Sublessees fail to provide proper documentation of their investments to City as well as as-built Drawings as defined in Section 509, within the time frame stated above, then City will not be responsible for any reimbursement of investment if otherwise required herein. Additionally, City may assess Liquidated Damages as appear in Article XX.

SECTION 508. DEPRECIATION AND EARLY TERMINATION. Developer or Sublessee shall establish a Depreciation Schedule for each facility, which shall be submitted to the City for its approval. Any schedule submitted by Developer or Sublessees for this purpose shall not be deemed a "Depreciation Schedule" until such schedule is approved by the City, which approval shall not be unreasonably withheld.

SECTION 509. AS-BUILT DRAWINGS. Developer shall submit the following as-built drawings to the City upon conclusion of construction activities:

A. Two complete sets of as-built Drawings containing a separate stamp from the Developer's Architect/Engineer attested to by both the Developer/Sublessee and either the Developer's or Sublessee's Architect or Engineer that such submitted Drawings constitute true and accurate representations of the as-built condition of the Capital Improvements. It is recommended that Developer review Sublessee's drawings before submittal to the City; and

B. One complete set in Computer Aided Design ("**CAD**") format which complies with the City's then-current CAD standards.

These Drawings must include any applicable governmental approval or permit numbers, the Capital Improvements as constructed or installed by the Developer or Sublessee on or in the Premises, and shall include the location and details of installation of all equipment, utility lines, and heating, ventilating, and air-conditioning ducts and related matters.

The Developer and Sublessees shall keep said Drawings current by updating the same to reflect thereon any changes or modifications which may be made in or to the Premises and then submitting such updated drawings to City.

SECTION 510. RELETTING. Each time a Concession Location is relet to a new Sublessee, the Developer or new Sublessee shall be required to renovate or modify the existing facility to the then-current Tenant Design Standards. In the event the Concession Location is to be used for a new concession service, the Developer or Sublessee shall rebrand and renovate the Concession Location and replace FFE as necessary to satisfy the standards of this Agreement and the Proposal and present a like-new Concession Location.

SECTION 511. LIENS. The Developer, for itself and its Sublessees, agrees not to permit any mechanic's or material man's or any other lien to be foreclosed upon the Airport or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or material man or for any other reason.

SECTION 512. CONSTRUCTION COMPLETION. All substantive construction will be completed by the Substantial Completion Date, and each Concession Location and the Common Areas shall be open and operating on the New Terminal Opening Day, except if the Developer's Substantial Completion Date is later than the New Terminal Opening Day, in which event the Concession Location and Common Area shall be open to the public no later than fourteen (14) days after the Developer's Substantial Completion Date. Notwithstanding the generality of the foregoing, Developer may propose, and the City may, in its reasonable discretion, agree to a later opening day for a limited number of Concession Locations for business or operational reasons but not for Developer's, Developer's Agents or Sublessee's failures to meet the construction schedule. Failure to meet either the Date of Substantial Completion or to be fully open on the New Terminal Opening Day as provided herein will subject Developer to Liquidated Damages in accordance with Article XX.

ARTICLE VI
DEVELOPER'S OPERATIONS
AND USE OF PREMISES

SECTION 601. PERFORMANCE AND OPERATING STANDARDS. The Developer and its Sublessees will provide services in a First-Class Manner by adhering to high standards of operation and service regularity, as defined below and audited from time-to-time, in accordance with the plans, policies and programs set forth in the Developer's Proposal. The principal elements of the Proposal that set forth the performance and operating standards of the Concession Program to be managed and implemented by Developer include, for illustration and without limitation: Tab 2 (Program Management Methodology), Tab 9 (Employee Incentive Program), Tab 10 (Sales and/or Customer Service Programs), Tab 14 (Operating Hours), Tab 15 (Management of the Concessions Programs), and Tab 20 (Pricing). When mutually agreed to by both Parties, the City, through the Director of Aviation, may amend these plans, policies and programs and make any necessary changes without further City Council approval. This Section reflects certain portions of Developer's Proposal agreed to by the City central to the requirement to manage the Concession Program in a First-Class Manner.

A. Hours of Operation. The Developer shall require Sublessees to maintain hours of operation that correspond as closely as possible with the flight schedules of the airlines operating in the New Terminal and the consumer needs and interests of Airport passengers, employees and users. Beginning

on the New Terminal Opening Day, the hours of operation shall be as set forth in Tab 14 (Operating Hours) of the Proposal. During the Lease Term, Developer shall manage the Concession Program according to the following minimum standards:

1. Some number of Concession Locations for Foodservice and Convenience Retail must be open at least one hour before the first departing flight each day.
2. Substantially all Concession Locations must be open between the hours of 6 A.M. and 10 P.M. each day.
3. Some number of Foodservice and Convenience Retail must remain open until thirty minutes after the last scheduled flight each day.
4. Automated Retail Units will be available at all times.
5. Developer and Sublessees shall maintain plans and schedules for flight delays and irregular operations, including, for example and without limitation, weather and other events that cause extended airline schedule delays and/or result in passengers overnighting in the New Terminal.

When mutually agreed to by the Parties, the City, through the Director of Aviation may agree to changes in the hours of operation without further City Council approval. Developer's failure to monitor and enforce the required hours of operation may result in the imposition of Liquidated Damages as provided in Article XX.

B. Pricing. Developer shall maintain a value pricing program as follows:

1. Pricing shall conform to the pricing program set forth at Tab 20 (Pricing) in Developer's Proposal. The principal element of the pricing program is that the selling price of goods and services shall be no more than fifteen percent (15%) higher than street pricing, calculated and monitored as presented in the Proposal. All sublessees will be required to participate in an employee discount program providing a minimum ten percent (10%) discount to badged employees, with exceptions for certain categories of products and services.

2. Should the City receive a significant number of complaints that Developer's pricing program results in an unreasonably large disparity between Airport pricing and street pricing and, as a result, depresses sales and revenues, the Parties shall meet and confer to identify and evaluate potential options to adjust the pricing program. Changes may include reexamining and adjusting the comparable store locations; introducing additional products and services at lower price points; adding products to the list of Established Price Items, as provided below; or additional marketing, promotional or similar activities. For purposes of this subsection, a "significant" number of complaints shall mean fifteen (15) complaints received from separate passengers using the New Terminal on a specific product and/or product category in any rolling twelve (12) month period.

3. Developer shall be responsible for monitoring and enforcing the pricing program among its Sublessees, and Developer's nonperformance of this obligation may result in the imposition of Liquidated Damages as provided in Article XX.

4. City has included this Section 601.B as a condition precedent to the tendering of this Agreement with Developer, as a critical factor underlying the acceptance by City of Developer's proposed financial offer and its pricing regime, and for all future operations under this Agreement. Developer explicitly confirms this Section 601.B as being acceptable for all operations by any firm under this Agreement, including Developer, Developer's Affiliates, and Sublessees.

5. The City has determined that certain items, called Established Price Items, must be offered at a consistent price as determined via the methodology shown below at all Concession Locations, regardless of Operator or the type of offering.

a. All Concession Locations will offer the Established Price Items at a consistent price. The only exception to this rule will be the sale of items which otherwise would be Established Price Items in sit-down restaurants or bars, where the items are sold for in-restaurant consumption only. Any "to-go" products sold within such establishments must meet the prices for Established Price Items. If any restaurant or bar operator does not wish to have two prices for the same item, then all products must be sold as Established Price Items.

b. Operators, with the approval of Developer and City, may offer Established Price Items at a price established for that specific product so that the retail price of the item is consistent across all Concession Locations, regardless of Operator.

c. Developer shall do a price comparison shop no more often than once every three (3) months.

d. The initial location which shall be used for price comparison shops shall be the QuikTrip convenience store located at 7133 NW Barry Road, Kansas City, Missouri, 64153. This comparable location shall be changed, subject to City's approval if the QuikTrip convenience store listed above ceases operations or substantially changes its mode of operation. Additionally, the comparable location may be changed upon request of the Developer, subject to the City's approval. This policy will be a contractual requirement as a precedent for allowing a reasonable pricing program to prevail for all other products and is non-negotiable. The prices charged shall be the exact prices charged at the comparison location, without markup, provided that prices shall be as commonly charged at the comparison location and not during any temporary sale or promotional period.

e. Reasons for product differentiation may include, but are not limited to:
   (1) Packaging (for example, water in boxes vs. plastic bottles); container/cup size;
   (2) status of brand (by way of example, Tasmanian Rain branded water versus brands such as Polar Springs or Dasani);
   (3) product acquisition cost (Developer or Sublessee shall be required to provide documentation to prove any claim of cost differences);
   (4) Other reasons as accepted by Developer and City.

f. Developer and City will review any potential suggested differentiators, as well as prices for all previously defined products, within seven (7) calendar days (or fewer), following the presentation of findings to the City, to provide updated Established Prices, as necessary, for all Items offered.

g. No product which fits within the definition of Established Price Items may be sold at the Airport if it is not included in the comparison shop and/or any equivalencies are established by Developer with approval by the City.

   (1) If any Concession Location offers a product which fits the definition of an Established Price Item, without a price established through a comparison shop or equivalency determination, the item will be immediately removed from the display, returned to the vendor, and the operator of that Concession Location will be subject to Liquidated Damages to be assessed by Developer or City.

h. If prices are to be changed, then they should be changed at all Concession Locations on the same day. Developer should coordinate the price change process.

i. City reserves the right to change the list of Established Price Items, subject to mutual agreement with Developer, if it receives multiple complaints from the traveling public, press,

or City officials, on the pricing of any general product class, without the further approval of the City Council.

SECTION 602. Applicable Law. The Developer shall comply with Applicable Law, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises and the Developer's improvements thereon or of adjoining public ways; provided however, that the Developer shall not be obligated to conform with any amendment to a rule, regulation, policy or directive adopted by the Director of Aviation or City Manager for the Airport that results in the Developer or Sublessee to incur a material capital or operating cost, except for the purposes of health, safety or environmental protection or if the Parties agree to a commercial resolution.

SECTION 603. INTERFERENCE WITH AIR NAVIGATION. The Developer, for itself and for Sublessees, agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aids or that would interfere with the safe and efficient operation of the Airport, or interfere with the operations of other tenants and users of the Airport. This Agreement shall terminate immediately, without recourse, if broadcast or receiving emanations of the Developer's equipment purposefully interfere with Federal Aviation Administration ("**FAA**") systems on the Airport. If such interference was unintentional, the source of broadcast or receipt of emanations shall be immediately unplugged and removed from the Airport within three (3) days. If Developer or Sublessee fails to follow the above rule, then this Agreement or the Sublease will be subject to immediate termination without further warning or process.

SECTION 604. SIGNAGE. Except for signage required by law to be applied to the Premises, the Developer agrees that no signs, advertising displays, or exterior decorations shall be painted on or erected in any manner upon the Premises without the prior written approval of the City, and that such signs shall conform to reasonable standards established by the City with respect to wording, type, size, design, color and location. A concise written description of signage, along with a brief artist's rendering, swatch(es)/sample(s) and proposed color scheme(s) shall be submitted to the City for review and approval prior to installation.

SECTION 605. CUSTOMER SERVICE AND MARKETING PLANS. Developer shall implement customer service and marketing plans as set forth in Tab 10 (Sales and/or Customer Service Training Programs) and Tab 19 (Marketing Program) of the Proposal. Developer and Sublessees shall execute these plan(s), as approved by the City, in its/their entirety. Developer shall submit revisions to the customer service and marketing plans no less frequently than within 180 days of the fifth (5^{th}) and tenth (10^{th}) anniversary of the New Terminal Opening Day. Developer shall review the previous plans and update them based on the effectiveness of customer service and marketing efforts in the preceding five years, and the availability of different marketing theories, ideas, technology and applications.

ARTICLE VII
MAINTENANCE OF PREMISES AND FACILITIES

SECTION 701. MAINTENANCE. The City shall furnish structural maintenance of City-constructed facilities including the roof of the New Terminal and provide the maintenance and operation of City-installed mechanical and electrical systems.

At their sole cost and expense, the Developer and/or its Sublessees shall maintain and repair the Premises at all times in accordance with Developer's Proposal, including primarily but without limitation Tab 17 (Sanitation, Pest Control, Cleanliness and Maintenance Plans), and in accordance with Applicable Law.

ARTICLE VIII
COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS

SECTION 801. COMPLIANCE WITH ENVIRONMENTAL LAWS. Developer hereby covenants and agrees, on behalf of itself and its Subtenants, to comply with all applicable Environmental Laws in connection with its use and occupancy of the Premises and any Airport facilities and property.

SECTION 802. STORM WATER BEST MANAGEMENT PRACTICES. Developer shall comply with, or shall cause any Sublessee as applicable to comply with, the Airport's Storm Water Best Management Practices ("**Storm Water BMP**"), which are attached hereto as **Exhibit G**.

SECTION 803. REVIEW OF ENVIRONMENTAL DOCUMENTS. Developer, at the written request of City, shall make available for inspection and copying, at Developer's cost and expense, upon reasonable notice and at reasonable times, all non-privileged documents and materials Developer has prepared to satisfy the requirements of any Environmental Law or submitted to any governmental regulatory agency; provided, that such documents and materials relate to environmental issues or Environmental Laws and are pertinent to the Airport.

SECTION 804. ACCESS FOR ENVIRONMENTAL INSPECTION. City shall have reasonable access to the Premises upon notice to Developer and at reasonable times to inspect the same in order to confirm Developer is using the Premises in accordance with applicable Environmental Laws. Any testing shall be accomplished in a manner designed to minimize any impact on Developer's operations and, subject to the next sentence, at Developer's expense. If such testing and analysis confirms that Developer's activities would not result in a technical violation under any Environmental Law, the City shall reimburse all costs of testing and analysis expended by Developer under this Section.

SECTION 805. ENVIRONMENTAL NONCOMPLIANCE. If Developer receives a notice of violation for an alleged failure to comply with an applicable Environmental Law related to Developer's operations at the Airport from a regulatory agency responsible for implementation of said Environmental Law, Developer shall provide a copy of such notice to the City within 48 hours of its receipt of such notice. If Developer fails to correct the alleged noncompliance within the period required by applicable Environmental Laws or does not appeal the notice of violation, then City, in addition to its rights and remedies provided elsewhere within this Agreement, may enter the Premises upon reasonable written notice to Developer and at reasonable times, and take all reasonable and necessary measures to correct the non-compliance as required by applicable Environmental Laws, at Developer's expense.

SECTION 806. WRITTEN AUTHORIZATION NECESSARY TO STORE, USE OR DISPOSE OF HAZARDOUS MATERIALS. Developer shall not store, use, treat or dispose of any Hazardous Materials on the Airport except those Hazardous Materials used in the ordinary course of its operations unless Developer first secures the written authorization of the City and complies with any reasonable conditions City may impose, which reasonable conditions shall be consistent with Environmental Laws, including the submission to City of all Safety Data Sheets (or similar data sheets) for the Hazardous Materials to be stored.

SECTION 807. DUTY TO NOTIFY CITY. In the event of Developer's knowledge of a release or threatened release of any Hazardous Materials into the environment relating to or arising out of Developer's use or occupancy of the Airport, Developer must notify the City as soon as reasonably practicable by contacting the Aviation Department Environmental Manager or the Airport's Communication Center promptly after the release. In the event any written claim, demand, action or notice is made against Developer regarding Developer's failure or alleged failure to comply with any Environmental Laws in connection with Developer's operations at the Airport, Developer must within a reasonable time notify City in writing and must provide City with copies of any written claims, demands, notices, or actions so made.

SECTION 808. ENVIRONMENTAL REMEDIATION. Developer shall undertake such steps to remedy and/or remove any Hazardous Materials or other environmental contamination released or discharged (or threatened to be released or discharged) in, on, under, to or from the Airport as a result of Developer's operations at the Airport that are required by the relevant environmental regulatory agency pursuant to applicable Environmental Laws to protect the public health and safety and the environment from actual or potential harm. Such work must be performed at Developer's expense. The City shall cooperate with the Developer so as not to inhibit such work. Developer shall submit to City its proposed plan for completing such work at the time submitted to the responsible regulatory agency. Upon reasonable written notice to Developer, City may review and inspect all such work at any time using City staff or, to the extent the City determines to be necessary, consultants and representatives of its choice at Developer's cost and expense.

SECTION 809. NATIONAL EMISSION STANDARDS FOR HARZARDOUS AIR POLLUTANTS. Developer warrants that all planning, design, fabrication, installation, construction, start-up, testing, maintenance and repair work performed pursuant to this Agreement will be performed in accordance with any applicable National Emission Standards for Hazardous Air Pollutants ("**NESHAP**"), 40 C.F.R. 61.145, as well as state and local law.

SECTION 810. STORM WATER COMPLIANCE.

(A) If applicable, Developer shall maintain any oil water separators or other types of process operated by the Developer or any Sublessee at the Airport in a manner that prevents the discharge of petroleum contaminants into the waterways that would negatively impact the City's National Pollutant Discharge Elimination System ("**NPDES**") permit. Use of soaps, surfactants or materials in a manner that may ultimately enter the storm water and negatively impact the City's NPDES permit is prohibited except for approved operational aircraft deicing and other uses specifically approved in writing by the City.

(B) The Developer will be responsible for containing spills or releases that can or will impact the storm water systems immediately when such spills or releases are caused or permitted by Developer. Any release or spill of a Hazardous Material into the environment at the Airport and caused or permitted by Developer, whether or not of a quantity reportable under Environmental Law must be reported to the City as soon as reasonably practicable, but in no event more than a twenty-four (24) hour period following any initial actions taken to contain and/or clean up the release. In the event such a release is determined to be beyond the Developer's ability to safely address, or if it cannot or will not be cleaned up prior to entering any storm water systems or should the release present an immediate hazard to life or property, the Developer shall notify the Aviation Department Environmental Manager or the Airport's Communication Center immediately.

SECTION 811. ENVIRONMENTAL INDEMNIFICATION. In addition to any indemnification set forth elsewhere in this Agreement, Developer hereby indemnifies and agrees to defend and hold harmless the Indemnified Parties from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations or notices of violation arising from or attributable to: (i) a presence or release of Hazardous Materials caused by Developer or Developer's Agents at the Airport or the subsurface, waters, air or ground thereof in excess of levels allowable by applicable Environmental Laws or the violation of applicable Environmental Laws due to Developer's or Developer's Agent's management, control, authorization, handling, possession or use of Hazardous Materials at the Airport into the environment (as environment is defined in CERCLA); (ii) any breach by Developer of any of its warranties, representations or covenants in this Article; (iii) Developer's remediation or failure to remediate Hazardous Materials as required by this Agreement. Provided, however, Developer shall have no indemnification obligation under subsection (i) of this Section for any costs or liabilities related to any release of Hazardous Materials at the Airport in, on, or under the Premises prior to the date of the Developer's first occupancy of the Premises, except to the extent the Developer or Developer's Agents exacerbate such release or fail to comply with applicable Environmental Laws. Developer's obligations hereunder will survive the termination or expiration of this Agreement, and will not be affected in any way by the amount of or the absence in any case of covering insurance or by the failure or refusal of any insurance

carrier to perform any obligation on its part under insurance policies affecting the Airport or any part thereof, except that, in the event that City recovers funds from insurance carriers in connection with claims associated with (i), (ii) and (iii) above, City may not recover the same funds from Developer.

ARTICLE IX
COMPLIANCE WITH LAWS AND PAYMENT OF TAXES

SECTION 901. COMPLIANCE WITH LAWS AND PAYMENT OF TAXES. The Developer, for itself and for Sublessees, and the City covenant and agree to observe and obey all federal, state and city laws and ordinances and airport rules and regulations; provided, however, that such airport rules and regulations are consistent with safety and are not in conflict with this Agreement, the Sublease, or the rules of any federal agency having jurisdiction thereover. The Developer and its Sublessees are required to purchase and maintain an Occupational License for the term of this Agreement and to establish an earnings tax account with the City. The Developer further agrees, on behalf of itself and Sublessees, whose Subleases must contain language substantially similar to this Article IX, to pay promptly, and not to permit to become delinquent, all applicable taxes, special assessments, excises, permit fees, license fees, and utility service charges.

Notwithstanding the foregoing provisions, the Developer or the Sublessee shall have the right, in its own name, to contest in good faith the validity or applicability of any law, statute, rule, regulation, order, or ordinance of any governmental body or agency to the Premises or the operation thereon. The fact that the Developer or Sublessee may, in connection with such contest, refrain from complying with such law, statute, rule, regulation, order, or ordinance shall not affect in any way the Developer's or Sublessee's obligation to (1) refrain from subjecting any part of the Premises to forfeiture or loss, and (2) pay the required fees set forth in Article IV. (Payments and Fees; Sublessee Fees)

SECTION 902. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

A. Developer's warranty. The Developer agrees that it shall develop, manage, use, and occupy the Premises in accordance with the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (hereafter collectively the "**ADA**"), including, without limitation, modifying the Developer's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons.

B. Accessible services. The Developer acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to disabled persons. The Developer shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state, or county disability rights legislation. The Developer agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Developer and Developer's Agents shall constitute a material breach of this Agreement.

C. Developer's alterations. With respect to all work required to be performed by the Developer or Sublessee in preparing the Premises for the Developer's or Sublessee's use and occupancy, including, without limitation, the construction and installation of all Concession Improvements and FFE on or at the Premises, the Developer, on behalf of itself and its Sublessees agrees to complete such work in full compliance with the ADA. Upon City's request, the Developer, on behalf of itself and its Sublessees, shall provide the City with evidence satisfactory to the City that all such work was completed in compliance with the ADA. The Developer, on behalf of itself and its Sublessees, further agrees that any future alterations or improvements made by the Developer to the Premises shall comply with the ADA.

D. ADA audit. The Developer shall conduct and complete, at the Developer's sole cost and expense, an audit as required under the ADA identifying and describing the architectural barriers to disabled access

which must or should be removed, which audit shall be subject to the City's review and approval. The Developer agrees, for itself and for its Sublessees, to remove, or cause to be removed, at the Developer's or Sublessee's sole cost and expense, all such barriers identified and described in the audit approved by the City.

E. Notice. The City and the Developer, on behalf of itself and Sublessees, agree to promptly, for the purposes of this section, promptly is defined as no greater than three (3) calendar days, give written notice to the other of any notices which it receives alleging ADA violations.

F. Developer's indemnification. The Developer and its Sublessees, shall release, defend, indemnify, and keep and hold harmless the City, its Agents, successors and assigns, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses resulting or arising from the Developer's or Sublessee's failure to comply with the Developer's or Sublessee's obligations hereunder with respect to the ADA.

SECTION 903. SUBLEASES. All Subleases under this Agreement shall contain language substantially similar to this Article IX to bind Sublessees to compliance with laws and payment of taxes.

ARTICLE X
INDEMNIFICATION AND INSURANCE

SECTION 1001 INDEMNIFICATION.

A. Developer shall indemnify, defend and hold harmless the Indemnified Parties from and against all liabilities, losses, costs, suits, claims, judgments, expenses, fines or demands of any kind (including, but not limited to, costs of investigation, reasonable attorney's fees, court costs and expert fees) of any nature whatsoever (collectively, "**Losses**"), arising out of or alleged to arise out of the use, occupancy or operations of Developer, or any of its Affiliates, officers, volunteers, representatives, agents, employees, contractors, subcontractors, licensees, subtenants, Sublessee, invitees, or suppliers (collectively, the "**Developer Parties**"), on the Premises or at the Airport or any acts or omissions of Developer in connection with this Agreement. Each of Developer's approved Affiliates shall indemnify the Indemnified Parties as provided to the extent set forth in this Section 1001 against any Losses arising out of or alleged to arise out of the use, occupancy or operations of or at the Airport of such Affiliate or any of its Developer's Parties.

B. Developer shall not be liable for any injuries, death or damage to the extent that such injury, death or damage is caused by sole the negligence or willful misconduct of an Indemnified Party. It is the intent of the parties that, where the negligence or willful misconduct of one or more Indemnified Parties is determined to have been contributory, the principles of comparative negligence as applied in the State of Missouri shall be followed and each party shall bear the proportionate cost of any loss, damage or liability attributable to its own negligence or willful misconduct.

C. The City shall have the right, at its option and at its sole expense, to participate in the defense of any suit, without relieving Developer of any of its obligations under this indemnity provision, provided that the City and its attorneys shall coordinate and cooperate with Developer's attorneys, unless the Developer and the Indemnified Parties cannot be represented by the same attorneys under Applicable Law or ethical rules applicable to attorneys, in which case the Developer shall be responsible for the costs of the attorneys for the Indemnified Parties in addition to those of the Developer.

D. Developer shall notify City, by fax or certified letter, promptly following Developer's receipt of any lawsuit filed against Developer and the City, any letter written by an attorney on behalf of a complainant, or a complaint by any regulatory agency arising out of or alleged to arise out of the use, occupancy or operations of an Developer Party on the Premises or at the Airport. Such notification shall be sent to

the City's Aviation Department at the address and/or facsimile number set forth herein without undue delay.

E. Sections, substantially similar to this Article shall appear in all Subleases.

F. The Developer shall hold liability for Developer and all Developer's Agents, including Sublessees, entering, or coming onto the Premises. The use of the Airport and the Premises by the Developer and the Developer's Agents shall be at their own risk.

G. This Section 1001 shall survive the termination or expiration of this Agreement with respect to occurrences during the term of this Agreement.

SECTION 1002. INSURANCE.

A. Without limiting Developer's obligations to indemnify the City, as provided in Section 1001, Developer and Sublessee, without expense to the City, shall obtain and cause to be kept in force at all times during the term of this Agreement, such liability and other insurance as is appropriate for activities under this Agreement, but not less than the types and amounts specified in this Section, whether such activities are to be performed by the Developer, any Developer Party, or anyone directly or indirectly employed by Developer, or anyone for whose acts they may be liable.

B. Insurance must be written under policies no more restrictive than the standard form of policy as follows:

1. Commercial General Liability Insurance with limits of $5,000,000.00 per occurrence and $5,000,000.00 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

   a. Severability of Interests Coverage applying to Additional Insureds.
   b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be $5,000,000.00.
   c. Liquor liability insurance with limits of not less than $5,000,000 per occurrence, $25,000,000 in the aggregate.

2. Workers' Compensation. Workers' Compensation Insurance as required by statute, including Employers Liability with limits of:

   Workers' Compensation – Statutory
   Employers Liability - $100,000 accident with limits of;
   $500,000 disease-policy limit;
   $100,000 disease-each employee.

3. Commercial Automobile Liability Insurance with a limit of $5,000,000 combined single limit per accident, written on a form at least as broad as the ISO CA 00 01, covering owned, hired and non-owned motor vehicles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance shall protect against claims arising out of the operation of motor vehicles on the Airport, as to acts done in connection with the Agreement, by Developer.

4. Property Insurance on all of the improvements on the Premises (now or hereafter existing) or used in connection therewith against any loss or damage by fire, flood, earthquake and other or any casualties or peril, and all other perils as are included within what is commonly known as "all risk coverage" for any improvements on the Premises with full replacement cost insurance, in amounts sufficient to prevent City from being or becoming a co-insurer within the terms of the policy or policies in question and in no event less than the full replacement cost value thereof, exclusive of

the cost of foundations, excavations, and footings below the lowest basement floor, and without any deduction being made for depreciation. The replacement cost value shall be determined from time to time, but not more frequently than once in any twelve (12) consecutive calendar months at the request of City, by an appraiser, architect and/or Developer. All property insurance proceeds shall promptly be deposited with the City.

SECTION 1003. INSURANCE GENERAL REQUIREMENTS.

A. The insurance, provided in Sections 1002 (B) (1), (2) and (3) above which are required to be purchased and maintained by Developer shall:

1. Include at least the specific coverages and be written for not less than the limits of liability specified herein or required by Applicable Laws, whichever is greater;

2. If Developer carries insurance limits greater than those required by this Agreement, the City shall have the right to the full amount of insurance coverage available to Developer, including amounts in excess of those required under this Agreement up to a maximum amount of $50,000,000;

3. Developer may use commercial umbrella/excess liability insurance so that Developer has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Agreement;

4. The City reserves the right at any time throughout the Term of this Agreement to adjust the insurance requirements set forth in this Agreement if, in the City's reasonable judgment, the insurance required by this Agreement is deemed inadequate to properly protect the City's interests. In such event, Developer agrees that it shall procure the adjusted insurance, provided that the coverage is available at commercially reasonable rates;

5. Include contractual liability insurance covering Developer's indemnity obligations under Section 1001 of this Agreement with no contractual liability limitation endorsement (applies to Subsections 1002 (1) and (3) only, only to the extent insurable thereunder);

6. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 30 days' prior written notice has been given to the City except that only ten (10) day notice shall be required in the event of cancellation due to non-payment of premium;

7. Contain a cross liability or severability of interest clause or endorsement (applies to Subsections 1002 (1) and (3) only);

8. Name the City as an additional insured (applies to Subsections 1002 (1) and (3) only);

9. Be primary without any right of contribution from any other insurance which may be carried by the City;

10. Waive Developer's rights of subrogation against the City, including the City's appointed and elected officials, agents and employees;

11. Written by companies that have an A.M. Best, or S & P rating of A-V or better or have been approved by the Director of Aviation;

12. Contain, to the extent available, waiver of all rights to set off, counterclaim or any other deduction, against the City, including the City's appointed and elected officials, agents and employees; and

13. Provide that it may not be invalidated by any action or inaction of Developer.

SECTION 1004. EVIDENCE OF INSURANCE.

A. Unless otherwise authorized by the Director, certificates or other evidence of insurance coverages in amounts no less than those stipulated herein or as may be in effect from time to time, required of Developer in this Article shall be delivered to the Director on or before the Effective Date.

B. Within fifteen (15) days after the date of written notice from the insurer of cancellation or reduction in coverage (but in all events before cancellation of such insurance), Developer shall deliver to the Director evidence that the required insurance has been reinstated or provided through another insurance company or companies. In no event shall the Developer permit the insurance coverage(s) defined within this Agreement to lapse.

SECTION 1005. INSURANCE DEFAULT. Notwithstanding any other provision of this Agreement, failure to obtain or maintain in force the insurance required herein shall constitute an event of default in accordance with Article XIII, subject to cure in accordance with Section 1304.

SECTION 1006. CITY INSURANCE. The City, in operating the Airport, will carry and maintain comprehensive liability and property damage insurance in such amounts as would normally be maintained by public bodies engaged in carrying on similar activities.

ARTICLE XI
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT AND NON-DISCRIMINATION

SECTION 1101. AFFIRMATIVE ACTION.

A. Developer shall establish and maintain for the term of this Agreement an Affirmative Action Program, to the extent required by Chapter 3, Code of General Ordinances of Kansas City, Missouri, and comply with all applicable provisions, rules and regulations relating thereto and any additions, amendments or subsequent requirements thereof.

SECTION 1102. EQUAL EMPLOYMENT. Developer shall:

A. To the extent required by Chapter 38, article I, refrain from any unlawful employment practices as defined by Chapter 38, Article III, Code of General Ordinances of Kansas City, Missouri, as amended.

B. Post at its Premises, at the office of employment, notices setting forth provisions of Chapter 38, Article III, and further setting forth that Developer agrees to abide by the provisions thereof and to implement the Certificate of Compliance or Affirmative Action Program submitted by Developer in connection with this Agreement.

C. Permit City's Director of CREOD, or her or his duly authorized agent or employees, access at all reasonable times to all such persons, books, papers, records, reports or accounts in the possession of or under the control of Developer, as may be necessary to ascertain compliance with Chapter 38, Article III, and to furnish such further information as may be required, all within ten (10) days of the date requested in writing.

D. Include as a condition thereof, within all contracts executed by Developer with a subcontractor and relating to this Agreement, the provisions of Chapter 38, Article III, Code of General Ordinances, to which all subcontracts also shall be subject.

SECTION 1103. NON-DISCRIMINATION.

A. Developer shall comply with the following FAA required provisions as interpreted from time to time by the United States Department of Transportation ("**USDOT**") or the FAA.

1. Civil Rights – General. Developer agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Developer transfers its obligation to another, the transferee is obligated in the same manner as Developer.

   This provision obligates Developer for the period during which the Premises is owned, used or possessed by Developer and the City remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2. Civil Rights – Title VI Assurances – Compliance with Nondiscrimination Requirements.

   a. Compliance with Regulations: Developer (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

   b. Non-discrimination: Developer, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Developer will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

   c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Developer for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Developer of Developer's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

   d. Information and Reports: Developer will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Developer is in the exclusive possession of another who fails or refuses to furnish the information, Developer will so certify to the City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

   e. Sanctions for Noncompliance: In the event of Developer's noncompliance with the non-discrimination provisions of this contract, the City will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

      i. Withholding payments to Developer under the Agreement until Developer complies; and/or

      ii. Cancelling, terminating or suspending the Agreement, in whole or in part.

f. Incorporation of Provisions: Developer will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Developer will take action with respect to any subcontract or procurement as the City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Developer becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Developer may request the City to enter into any litigation to protect the interests of the City. In addition, Developer may request the United States to enter into the litigation to protect the interests of the United States.

g. Civil Rights – Title VI Clauses for Use/Access to Real Property. Developer for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises or the Airport, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Developer will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts And Authorities in Paragraph 3 below.

In the event of breach of any of the above nondiscrimination covenants, the City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

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

a. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

b. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964);

c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

d. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

e. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age);

f. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

g. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid

recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

i. The FAA's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

4. Developer further agrees to comply with all provisions of Public Law 101-336, as well as 28 C.F.R. Part 35 and 29 C.F.R. Part 1630 (Americans with Disabilities Act), as amended from time to time during the term of this Agreement. Such law prohibits discrimination on the basis of disability by private entities in places of public accommodation and requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities.

ARTICLE XII
ACDBE AND MBE/WBE PARTICIPATION

SECTION 1201. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The 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.

The Developer agrees to include the above statements in any subsequent Sublessee agreements or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

The City is committed to ensuring that Airport Concession Disadvantaged Business Enterprises ("**ACDBEs**") participate to the maximum extent possible in the performance of City agreements. The City has set a minimum goal of sixteen percent (16%) for ACDBE participation for this Agreement.

Developer's plan for ACDBE participation in the Concession Program is included at Tab 4 (ACDBE Program & Local Participation Requirements) of the Proposal. Developer shall adhere to its plan to ensure the level of ACDBE participation set forth in the Proposal.

When an ACDBE subcontractor is terminated or fails to complete its work on the contract for any reason, the Developer is required to make good faith efforts to find another ACDBE subcontractor to substitute for the original ACDBE. The Developer will be required to obtain written approval from City for the replacement of the ACDBE or the substitute ACDBE and to provide copies of all new or amended subcontracts or documentation of good faith efforts. The good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the contract as the ACDBE that was terminated, to the extent needed to meet the program goal under the Agreement. The good faith efforts shall be documented by the Developer. If City requests documentation under this provision, the Developer shall submit the documentation within seven (7) days. City shall provide a written determination to the Developer stating whether or not good faith efforts have been demonstrated.

Failure by Developer to carry out the requirements of this part will constitute a material breach of the Agreement and may result in the termination of the Agreement or such other remedy as City deems appropriate.

SECTION 1202. MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE PARTICIPATION. The City requires its Developer and Sublessees to use good faith efforts to provide for meaningful participation by MBEs and WBEs in all construction work. For purposes hereof, MBE shall mean any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, WBE shall mean any business enterprise which is at least fifty- one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by women and such ownership is real, substantial, and continuing. A minority shall be defined as African American, Hispanic, Asian and Pacific Islander, Native American, or Alaskan Native. "Meaningful participation" shall mean that at least fifteen percent (15%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation MBE firms, and at least ten percent (10%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of WBE firms. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

A. Dividing the work to be subcontracted into smaller portions where feasible.

B. Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Developer and its Sublessees shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

C. Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.

D. Utilizing the list of eligible MBEs and WBEs maintained by CREOD or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.

E. Encouraging the formation of joint ventures, partnerships, or other similar arrangements among subcontractors, where appropriate, to ensure that the Developer and Contractor will meet their obligations hereunder.

F. Ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.

G. Not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs, where appropriate.

H. Providing meaningful efforts to identify new, qualified, but uncertified MBEs and WBEs, and assisting same in obtaining their certification.

ARTICLE XIII
TERMINATION OF AGREEMENT IN ENTIRETY

SECTION 1301. CITY'S RIGHT TO TERMINATE. The City, acting by and through the Director of Aviation, may declare this Agreement terminated in its entirety, upon the happening of any one or more of the following events and may exercise all rights of entry and re-entry upon the Premises, following Developer's right to cure, if any, as provided herein:

A. Nonpayment. If the payments which the Developer herein agrees to pay City shall be unpaid for a period of 30 days after the date the payment was due and remains uncured as provided in Section 1304.

B. Default. If the Developer shall fail in the performance of any covenant or condition herein required to be performed by the Developer, that is not cured as provided in Section 1304, including the responsibility to actively manage the Concession Program and Sublessees.

C. Bankruptcy. If the Developer makes an assignment for the benefit of creditors or if the Developer files an answer admitting the material allegations of a petition filed against any said assignee or sub Developer in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating the Developer as bankrupt or insolvent, or approving a petition seeking a reorganization of Agreement, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

D. Suspension. The happening of any act or omission, other than a force majeure event pursuant to Section 2107, that results in the suspension or revocation of any act, power, license, permit or authority that terminates the conduct and operation of the Concession Program by the Developer, or suspends it for any time in excess of thirty (30) days.

E. Attachment. The levy of any attachment, or the execution of any process of any court of competent jurisdiction which does or as a direct consequence of such process will interfere with the Developer's use of the Premises and will interfere with its operations under this Agreement, and which attachment, execution, or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days.

F. Relinquishment. The Developer shall voluntarily abandon, desert, vacate or discontinue all or a part of its operation of the Premises or any other action that results in a failure by the Developer to provide the public and others with the service contemplated hereunder or which substantially negatively impacts the Concession Fees paid to the City.

G. Developer or any of Developer's Agents shall be indicted by any legal authority for any alleged crime connected with the performance of this Agreement. Developer shall include this clause in any contract with any Sublessee to this Agreement.

H. Pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Any violation of this prohibition by Developer, Developer's Agents, Sublessee, or Sublessee's Agent shall constitute a default hereunder.

I. There shall occur a default under any other agreement between Developer and City, if any, and such default is not cured as may be provided in such agreement; provided, however, that nothing herein shall be deemed to imply that Developer shall be entitled to additional notice or cure rights with respect to such default other than as may be provided in such other agreement.

On the date set forth in the notice of termination, the terms of this Agreement and all right, title and interest of the Developer shall expire.

Failure by the City to take any authorized action upon default by the Developer of any of the terms, covenants or conditions required to be performed, kept and observed by the Developer shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Developer. The acceptance of Concession Fees by the City from the Developer for any period or periods after a default by the Developer of any of the terms, covenants, and conditions herein required to be performed, kept and observed by the Developer shall not be deemed a waiver or estoppel of any right on the part of the City to terminate this Agreement for failure by the Developer to so perform, keep or observe any of said terms, covenants or conditions.

Developer shall include language substantially similar to this Section 1301 in any Sublease, reserving to itself the rights to terminate the Sublease, and reserving to City the right to require Sublease to be terminated by Developer.

SECTION 1302. DEVELOPER'S RIGHT TO TERMINATE. The Developer, at its option, may declare this Agreement terminated in its entirety, in the manner provided herein for the following causes:

A. Restraining Use of Airport. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for airport purposes in its entirety or substantial entirety.

B. Abandonment of Airport. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall fail to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by the scheduled air carriers.

SECTION 1303. ADDITIONAL RIGHT TO TERMINATE. Either the City or the Developer may terminate this Agreement if the FAA or a court of competent jurisdiction issues an order or ruling which materially and adversely affects this Agreement or the ability of the City or the Developer to perform their respective obligations set forth herein. Termination of this Agreement under this Section 1303 will not give any party any right to seek damages if the Parties otherwise comply with their obligations up to the date of termination.

SECTION 1304. PROCEDURE FOR TERMINATION OR REPOSSESSION. Upon the occurrence of an event of default, the non-defaulting party shall provide written notice as provided in Section 2118 to the defaulting party and provide a reasonable period to cure an event of default prior to termination. The limited exception to this obligation is for events of default explicitly declared herein to be incurable. The defaulting party shall immediately investigate the alleged default and respond to the non-defaulting party stating whether the defaulting party contests the allegation or plans to cure and, if so, the corrective action plan. If the defaulting party elects to cure, the party shall commence corrective action immediately and complete corrective action as promptly as is reasonably practicable. Notwithstanding the generality of the foregoing, defaults that affect public health, safety or security or the maintenance of bond and insurance coverage shall be cured within no

more than three (3) days or such lesser period of time as may be prescribed by the City; defaults involving the payment of the Concession Fee or additional fees shall be cured within ten (10) business days; and all other defaults shall be cured within the time period established by the Parties. In the event the defaulting party fails to respond to the notice of default, fails to commence corrective action, or fails to complete corrective action by the prescribed deadline, the non-defaulting party may terminate this Agreement by providing written notice to the other party.

SECTION 1305. CITY'S RIGHT TO RE-ENTER AND RESUME SERVICES. Except as provided in Section 1304 preceding, upon termination as provided herein, the City shall have the right at once and without further notice to the Developer to remove the Developer and its business, by force or otherwise and with or without legal process, to remove all chattels belonging to the Developer that may be found upon or within the Airport or any premises or facilities used in the operation of the Developer without being liable to prosecution or to any claim for damages therefore. Such re-entry or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of the Developer under this Agreement. On such termination by the City, all rights and privileges of the Developer thereunder shall cease, and the Developer shall immediately vacate any space occupied by it on the Airport or any premises or facilities used in the operation of the business. In any event, any costs associated with the activities in this section shall be borne by the Developer.

SECTION 1306. RIGHTS CUMULATIVE. It is understood and agreed that the rights and remedies of the City and the Developer specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto, provided however, except in cases involving willful or wanton conduct, and except as otherwise provided above, Developer's liability to the City is limited to its obligations to pay commissions as described above.

ARTICLE XIV
RESERVATIONS

SECTION 1401. RESERVATIONS. The grant of the Developer thereunder is subject to the following reservations and conditions:

A. The City reserves the right, but shall not be obligated to the Developer, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport. The City reserves the right to direct and control all the activities of the Developer in this regard.

B. The City reserves the right further to develop or improve the Airport as it sees fit, regardless of the desires or views of the Developer and without interference or hindrance.

C. As set forth in Section 101.A, the City reserves the right to withdraw from the Premises any Concession Location, Creative Space, Common Area, Back of House or other area included in the Premises needed, as determined by the City in its sole discretion, for Airport operations or the operational needs of one or more signatory airlines serving the Airport. In such event, City shall seek to identify an alternate location within the New Terminal that is comparable in size and similarly suitable for the concession service(s) offered at the original location and, if such location is identified by City and accepted by Developer and Operator, to modify **Exhibit C** accordingly. The City will give the Developer and any Sublessee at a Concession Location sixty (60) days' written notice of City's intent to withdraw the area, unless such withdrawal is required sooner by the FAA, TSA or other Governmental Authority. Whether the location is withdrawn or relocated, City shall reimburse Developer, for the benefit of the Sublessee if the Sublessee was responsible for the cost of Capital Improvements at the original Concession Location, for the unamortized portion of Eligible Costs as documented herein. In the event the Parties elect to relocate, City further shall deliver the new location in Shell Condition capable for Build-out by Developer or Sublessee, or reimburse Developer, for the

benefit of Sublessee if applicable, for the cost to bring the new location to Shell Condition. Reimbursement for Eligible Costs and payment to bring a new location to Shell Condition shall be the Developer's and Sublessee's sole remedy, and the City assumes no liability for lost earnings or profits resulting from withdrawal and/or relocation. Each Sublease shall include a provision allowing for termination or relocation consistent with this provision.

D. During time of war or national emergency, the City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities, and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

E. It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the Airport.

F. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be constructed, any building or other structure on the Airport which, in City's sole opinion, would limit the usefulness of the Airport or constitute a hazard to aircraft.

G. The City reserves the right to assign its obligations hereunder to any public entity that assumes the ownership, operation and sponsorship of the Airport or to any private entity that assumes the obligations, pursuant to a lease or contract with the City, to manage the Airport or the New Terminal.

ARTICLE XV
DAMAGE OR DESTRUCTION

SECTION 1501. PARTIAL DAMAGE. If all or a portion of the Airport are partially damaged by fire, explosion, acts of God, the elements, severe climatic or weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves), acts of the public enemy, sabotage, riots, rebellion, and other civil commotion or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by the City, subject to the limitations as hereafter provided; provided however, if said damage is caused by the negligence or omission to act of the Developer or Developer's Agents including Sublessees, the Developer shall be responsible for directly and fully paying for all such repair and for directly and fully reimbursing the City for the cost and expenses incurred in such repair upon demand and as directed by the City.

SECTION 1502. EXTENSIVE DAMAGE. If the damages are so extensive as to render the Premises or a portion thereof uninhabitable, but are capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the City, subject to the limitations as hereafter provided, and an appropriate portion of the rents, fees, and charges payable herein shall abate from the time of the damage until such time as the Premises or portion thereof are fully restored and certified by the City as again ready for use; provided, however, that if such damage is caused by the negligence or omission to act of the Developer, Sublessees or the Developer's Agents, said rents, fees, and charges will not abate and the Developer shall be responsible for reimbursing the City for the costs and expenses incurred by the City in completing such repairs upon demand and as directed by the City.

SECTION 1503. COMPLETE DESTRUCTION. If all or a substantial portion of the Premises are completely destroyed by fire, explosion, acts of God, the elements, severe climatic and weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves (tsunami)), acts of the public enemy, sabotage, riots, rebellion, or other civil commotion or other casualty, or are so damaged that

they are uninhabitable and cannot be replaced except after more than thirty (30) days, the City shall be under no obligation to repair, replace, or reconstruct the Premises, and an appropriate portion of the rents, fees, and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the Premises are fully restored. The City shall notify the Developer of the City's intentions within sixty (60) days of the destruction or damage. If within twelve (12) months after the time of such damage or destruction, the Premises have not been repaired or reconstructed, the Developer may terminate this Agreement in its entirety upon seven (7) days written notice to the City, such termination to be effective as of the date of such damage or destruction subject to the survival of the Developer's obligations as set forth in this Agreement, particularly in Article XVI (Survival of Obligations) herein. Notwithstanding the foregoing, if the Premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of the Developer or the Developer's Agents, said rents, fees, and charges shall not abate and the City may, in its discretion, require the Developer to repair and reconstruct the Premises within twelve (12) months of such destruction and pay the cost therefor, or the City may repair and reconstruct the same within twelve (12) months of such destruction and the Developer shall fully reimburse the City for the cost and expenses incurred by the City in completing such repair upon demand and as directed by the City.

SECTION 1504. LIMITS OF CITY'S OBLIGATIONS DEFINED. It is understood that, in the application of the foregoing provisions, the City's obligations shall be limited to repair or reconstruction of the Premises to condition of the Base Building Work. Capital Improvements shall be the responsibility of the Developer. Any such replacement by Developer shall be equivalent to or better in quality than the Capital Improvements so destroyed or damaged, as of the date of the original installation and construction. Further, City will not be responsible for any projected or actual loss of sales or revenue.

SECTION 1505. RESTRICTIONS ON ABATEMENT. The foregoing provisions for abatement of the obligation to pay rents, fees, and charges required under this Agreement and for cancellation of this Agreement shall not apply if the Developer has caused or is responsible in any part for the Premises becoming damaged, destroyed, untenable, or uninhabitable.

ARTICLE XVI
SURVIVAL OF OBLIGATIONS

SECTION 1601. CITY'S RIGHT TO ENFORCE. Termination of this Agreement, whether by expiration or sooner termination, shall not affect the right of the City to enforce any or all indemnities and representations and warranties given or made by the Developer to the City under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof, including, without limitation, Section 409 (Payment and Performance Bond), Section 501 (Developer Construction Agreement), Section 502 (Construction Instructions), Section 902 (Compliance with Americans with Disabilities Act) and Section 2124 (Brokers), as well as Articles X (Indemnification and Insurance), XVII (Condemnation), XVIII (Litigation), and XIX (Liens). The Developer specifically acknowledges and agrees that, with respect to each of the Developer's indemnities contained in this Agreement, the Developer has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Developer by the City. A substantially similar clause shall appear in all Subleases tendered by Developer.

SECTION 1602. ACCRUED OBLIGATIONS. The Developer's obligation to make payments to the City in respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to the City) which are accrued at the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement.

ARTICLE XVII
CONDEMNATION

SECTION 1701. DEFINITIONS. For purposes of this Article XVII. (Condemnation), the following capitalized terms shall have the following meanings

A. "Award" means all compensation, sums or value paid, awarded, or received for taking, whether pursuant to judgment, agreement, settlement or otherwise.

B. "Date of Taking" means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemner, and (b) the date on which the Developer is dispossessed.

C. “Taking” means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

SECTION 1702. GENERAL. If during the Agreement term, any Taking of all or any part of the Premises or any interest in this Agreement occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Article XVII. (Condemnation). The City and the Developer intend that the provisions hereof govern fully in the event of a Taking.

A. Total Taking; Automatic Termination. If a total Taking of the Premises occurs (all the Premises are included in the Taking) then this Agreement shall terminate as of the Date of Taking.

B. Partial Taking: Election to Terminate.

1. Entire termination. If a Taking of any portion (but less than all) of the Premises occurs, then this Agreement shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by the Developer for the operation of the Concession; (b) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but the City is unwilling or unable to cure such condition; and (c) the City elects to terminate.

2. Material portion taken. If a partial Taking of a material portion of the Premises or the Airport terminal structure within which a portion of the Premises is located occurs, the City shall have the right to terminate this Agreement in its entirety.

3. Notice of election. The City's election to terminate this Agreement pursuant to this Article XVII. (Condemnation) shall be exercised by the City by giving notice to the Developer on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Agreement shall terminate upon on the thirtieth (30th) day after such notice is given.

4. Award. Upon termination of this Agreement pursuant to a Total Taking under Section 1702.A. (Total Taking; Automatic Termination) or an election under Section 1702.B (Partial Taking; Election to Terminate) herein then:

a. Developer.

i. Fees. The Developer's obligation to pay all rents, fees and charges required under this Agreement shall continue up until the date of termination and thereafter shall cease.

ii. Surviving obligations. The Developer shall continue to be obligated to perform and comply with all obligations that are intended to survive the termination of the Agreement, including, without limitation, those obligations set forth in Article XVI. (Survival of Obligations) herein.

iii. Concession Improvements. The Developer shall be entitled to recover unamortized value of the Concession Improvements constructed and installed on the Premises by the Developer, so long as required and timely documentation of the investments was provided. The unamortized value of the Concession Improvements shall be determined to be the balance after the depreciation taken using the Depreciation Schedule.

iv. No claim against the City. The Developer shall have no claim against the City or others for (i) compensation or indemnity for the Developer's leasehold interest and (ii) compensation and damages payable for or on account of land (including access rights) or improvements thereon except as provided in Section 1702.B.4.a.(3) (Concession Improvements) herein.

v. Separate claim against condemning authority. The Developer may make a separate claim for compensation from the condemning authority for the Developer's relocation expenses, or the interruption of or damage to the Developer's business or damage to the Developer's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Developer may receive any Award made specifically to the Developer for such claim.

b. City. The City shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the leasehold estate created by this Agreement), except for the unamortized value of the Concession Improvements as set forth in Section 1702.B.4.a.(3) (Concession Improvements) herein.

5. Partial Taking; Continuation of Agreement. If a partial Taking of the Premises occurs and this Agreement is not terminated in its entirety under Section 1702.B. (Partial Taking; Election to Terminate) herein, then this Agreement shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion of the Premises not taken, and the rights and obligations of the City and the Developer shall be modified as follows:

A. Potential Fee Reduction. If the Taking causes any portion of the Premises to become unusable for the operation of the Concession, as authorized under this Agreement, the Concession Fee shall be reduced as follows:

1. Non-sales space. For all non-Sales space comprising the Premises that are part of the Taking, the Concession Fee paid by the Developer will be reduced by a factor comprising the square footage of the space comprising the Taking multiplied by the applicable rates and charges established by the City for the applicable category of space.

2. Sales space. For the Sales spaces of the Premises that are part of the Taking, the Concession Fee paid by the Developer shall be reduced proportionately in a manner equitably determined by City and Developer at the time of the Taking.

B. Concession Improvements. The Developer shall be entitled to recover the unamortized value of the Concession Improvements constructed and installed on the Premises by the Developer, so long as investments were timely and completely documented. The value of the Concession Improvements shall be determined to be the balance after the depreciation taken on a straight-line basis.

C. No claim against the City. The Developer shall have no claim against the City or others for (i) compensation or indemnity for the Developer's leasehold interest and (ii) compensation and damages payable for or on account of land· (including access rights) or improvements thereon (except as provided in Section 1702.B.4.a.(3) (Concession Improvements) herein.

D. Separate claim against condemning authority. The Developer may make a separate claim for compensation from the condemning authority for the interruption of or damage to the Developer's business or damage to the Developer's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Developer may receive any Award made specifically to the Developer for such claim.

E. City's Award. The City shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the leasehold estate created by this Agreement), except for the unamortized value of the Concession Improvements as set forth in Section XVII.B.4.a.(3) (Concession Improvements) herein.

F. Prompt Use. Any portion of the Award received by the Developer shall be used promptly by the Developer to the extent necessary to restore or replace the Concession Improvements on the remaining Premises, in accordance with Plans, specifications, Drawings, cost estimates and schedules first approved in writing by the City.

G. Continuing obligation. Nothing herein shall be construed to excuse the Developer from the Developer's full performance of all covenants, obligations, terms and conditions under the Agreement as to the part of the Premises not part of the Taking and the Developer shall remain responsible for paying to the City all rents, fees and charges required under the Agreement.

6. Temporary Takings. Notwithstanding anything to the contrary in this Article XVII. (Condemnation), if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Agreement shall remain unaffected thereby, and the Developer shall continue to pay the rents, fees and charges required under the Agreement and to perform all of the terms, conditions and covenants of this Agreement. In the event of such temporary Taking, the City shall be entitled to receive any Award.

7. Responsibility for Sublessees. Developer shall be responsible for the administration of all activities under this Article XVII as they relate to Sublessees and shall be responsible for coordination with the City to ensure that all activities under this Article XVII are completed on a timely basis.

ARTICLE XVIII
LITIGATION

SECTION 1801. DEVELOPER RESPONSIBLE. If the City shall, with or without any fault, be made a party to any litigation commenced by or against the Developer arising out of the Developer's or its Sublessee's occupancy or use of the Premises, or attributable to the construction, installation, or use of the Concession Improvements or the Developer's or FF&E (other than condemnation proceedings), the Developer and Sublessee shall release, indemnify, defend, and keep and hold harmless and if appropriate or necessary, insure the City and the City's Agents, from and against any and all claims, demands, actions, suits, causes of action, judgments, injunctions, decisions, orders, liabilities, losses, damages, costs and expenses arising out of or related to any such litigation, including, without limitation, paying any and all costs, charges, and reasonable attorneys' fees incurred or imposed on the City in connection with such litigation. In any action by the City for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants, or conditions contained in this Agreement, the City shall be entitled to recover all costs, fees, charges, consultants' fees and attorneys' fees incurred or imposed on the City in connection with such actions.

SECTION 1802. ATTORNEYS' FEES. For purposes of this Agreement, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of law for which the City's attorneys' services were rendered who practice in the City.

SECTION 1803. CONSULTANTS' FEES. For purposes of this Agreement, reasonable Consultants' fees shall be equivalent to the actual billing for hours work and expenses by City's consultants pursuant to efforts rendered.

SECTION 1804. PROMPT NOTICE. Each party shall give prompt written notice to the other party of any claim or suit instituted against it that may affect the other party.

SECTION 1805. WAIVER OF CLAIMS. The Developer, for itself and on behalf of Sublessees, hereby waives any claim against the City and the City's Agents for loss of revenue, loss of opportunity, and loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceedings declaring this Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

ARTICLE XIX
LIENS

SECTION 1901. CITY'S LIEN. The City shall have a lien upon all the Developer's FFE upon the Premises, to the extent permitted by law, for the purpose of securing to the City the payment of all sums, including rents, fees, and other charges, which may be due from the Developer under this Agreement. In the event that past due rents, fees, or charges are not paid by the Developer within five (5) days after a written notice of default is given by the City to the Developer, the City may take possession of and sell such portion of the Developer's FFE as may be sufficient to pay the delinquent rents, fees, and charges owed by the Developer to the City. A sale of the Developer's personal property pursuant to this Article XIX (Liens) may be made either publicly or privately, upon the notice given to the Developer as herein provided.

SECTION 1902. OTHER LIENS PROHIBITED. The Developer shall not commit or suffer any act or neglect whereby the Premises, or any portion thereof, including any portion of the Airport's or the Concession Improvements thereupon or therein, or the estate or interest of the Developer in the same, at any time during the term of this Agreement shall become subject to any attachment, lien, charge, or encumbrance whatsoever. The Developer shall release, indemnify, defend, save and hold the City harmless, and if or when appropriate or necessary, insure the City, and the City's Agents from and against any and all attachments, liens, charges, and encumbrances, and any and all actions, suits, judgments, and orders relating thereto and any and all costs,

fees, charges, expenses, and attorneys' fees resulting therefrom, it being expressly understood that the Developer shall have no authority, express or implied, to create any attachment, lien, charge, or encumbrance upon or affecting the Premises, or any portion thereof, except as otherwise authorized in writing by the City under this Concession Agreement.

ARTICLE XX
LIQUIDATED DAMAGES

SECTION 2001. FAILURE TO FOLLOW AGREEMENT. Developer's or Sublessees failure to adhere to the Agreement (specifically including any requirement imposed by any Exhibit, as well as any differences between commitments made in Developer's Proposal and its actual mode of operation) is reasonably anticipated to result in inconvenience to the public, adverse effects on the overall business of the Airport, a reduction in the amount of Concession Fees to be paid to the City, unfair rents or charges assessed to Sublessees, and/or a significant expenditure of the City resources to address the failure. The Parties agree that the damages sustained by the City for violations of the provisions of the Agreement and the plans, policies and programs in the Proposal will be difficult to determine and track. Therefore, the Parties hereto agree that the amounts set forth as follows are reasonable estimates of the damages anticipated to be suffered or incurred by the City.

SECTION 2002. LIQUIDATED DAMAGES ASSESSMENTS AND OPPORTUNITY TO CURE.

A. City may assess Liquidated Damages for failure to construct the Capital Improvements by the Substantial Completion Date and/or to open each Concession Location by the New Terminal Opening Day, in accordance with Section 512 hereof. Liquidated Damages for failure to meet the deadlines in Section 512 will be ONE THOUSAND DOLLARS ($1,000) per day per Concession Location. These Liquidated Damages may be assessed without opportunity to cure; provided however that Developer shall take all commercially reasonable actions to satisfy its obligations.

B. Developer further shall be liable to pay Liquidated Damages to the City for failure to manage the Concession Program in accordance with the RFP, the Proposal, and the performance and operating standards prescribed in this Agreement. Actions for which the City may assess Liquidated Damages against Developer shall include, for example and without limitation, the following:

(i) failure to operate the Loading Docks in accordance with Section 402.D and the Loading Docks Operational Plan required thereunder;

(ii) failure to operate each Concession Location for the minimum required hours of operation as set forth in Section 601.A, for which Liquidated Damages may be assessed on a per-day, per-Concession-Location basis;

(iii) failure to comply with the pricing program as set forth in Section 601.B;

(iv) failure to maintain the Premises as set forth in Section 701;

(v) failure to submit required documentation as required under this Agreement;

(vi) failure to remove a product deemed objectionable by the City within the time provided for removal;

(vii) violation of a fire safety standard or requirement; and

(viii) violation of a health and human safety standard or requirement.

C. Liquidated Damages for the violations identified in the preceding paragraph shall be TWO HUNDRED AND FIFTY DOLLARS ($250) per day for the first five (5) calendar days. A second Liquidated Damage in the amount of FIVE HUNDRED DOLLARS ($500) per day may be assessed if the incident which led to the imposition of the Liquidated Damage continues after five (5) calendar dates. If the incident which led to imposition continues after ten (10) calendar days, the City may impose Liquidated Damages in the amount of ONE THOUSAND DOLLARS ($1,000) per day until the violation is corrected.

SECTION 2003. FAILURE TO CURE. The City's imposition of five (5) Liquidated Damages Assessments within a rolling twelve (12) month period for a specific Concession Location may result in the withdrawal of the Concession Location from the Premises or termination of the Sublease, in accordance with Section 101.D.

SECTION 2004. PAYMENTS. Developer shall pay all Liquidated Damages within thirty (30) days of the imposition thereof. The failure to pay Liquidated Damages shall represent a separate default under this Agreement. Developer may pass through any Liquidated Damages assessed by City upon a Sublessee and shall be responsible for collection thereof. However, payment is still due directly from Developer to City on Sublessee's behalf regardless of whether Developer can collect the value of the Liquidated Damage from Sublessee.

SECTION 2005 NO WAIVER; NO OBLIGATION. The City's failure to impose sanctions for any violation shall not waive any right or prohibit the City from doing so for subsequent violations. The City shall have no obligation, whether to Developer or any third party, to impose fines on or otherwise act against any party at the City for violation of the Agreement or any performance and operating standards adopted by the Developer.

SECTION 2006. OTHER FINES. Other fines and penalties may be set forth in the Airport Rules and Regulations, and nothing in this Agreement is intended to limit the ability of the City to impose those fines and penalties as specifically provided by the Airport Rules and Regulations.

SECTION 2007. REMEDIES CUMULATIVE. All rights, options and remedies of the City contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement. Furthermore, payment of any liquidated damages amount shall not relieve Developer of its responsibility for physical damage, personal injury, or any other harm caused by Developer's Agents.

ARTICLE XXI
ADDITIONAL PROVISIONS

SECTION 2101. NO PERSONAL LIABILITY. No council member, director, commissioner, officer, employee, consultant, or other agent of either party shall be personally liable under or in connection with this Agreement.

SECTION 2102. AGREEMENTS WITH THE UNITED STATES. This Agreement is subject and subordinate to the provisions of any agreement heretofore made between the City and the United States, 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 to the expenditure of federal funds for the extension, expansion, or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to the Developer herein.

SECTION 2103. MODIFICATIONS FOR GRANTING OF FAA FUNDS. In the event the FAA requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the

improvement of the Airport, the Developer agrees to consent to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said FAA funds or government grants, provided that in no event shall such changes impair the rights of the Developer hereunder.

SECTION 2104. GOVERNING LAW. This Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Developer: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

SECTION 2105. AMENDMENTS. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of the Parties.

SECTION 2106. PREVIOUS AGREEMENTS. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations, or conditions of any existing or prior agreement, if any, between the Developer and the City.

SECTION 2107. FORCE MAJEURE. Neither the City nor Developer shall be deemed in violation of this Agreement if either party is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior Governmental Authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which the Parties are not responsible or which are not within their control; provided, however, that these provisions shall not excuse Developer from paying the Concession Fee and additional fees as provided herein. The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefore shall be prohibited, restricted or rationed by any Applicable Law.

SECTION 2108. INVALID PROVISIONS. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or the Developer in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

SECTION 2109. HEADINGS. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

SECTION 2110. INTERPRETATION. In general, it is the intention of the City that the language of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against either the City or the Developer.

SECTION 2111. WITHHOLDING REQUIRED APPROVALS. Whenever the approval of the City, or the City, or of the Developer, is required herein, no such approval shall be unreasonably requested or withheld.

SECTION 2112. SUCCESSORS AND ASSIGNS. All the terms, provisions, covenants, stipulations, conditions, and considerations of this Agreement shall extend to and bind the legal representatives, successors, Sublessees and assigns of the respective parties hereto.

SECTION 2113. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. No verbal statement, representation or agreement made by any

one or more City or its Council representatives, City's Agents, or any other representatives of the City before or after the execution hereof shall be binding upon the City.

SECTION 2114. WAIVERS. No waiver of default by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

SECTION 2115. TITLE TO SITE. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple by the City or in such lesser estate as in the opinion of the City Attorney is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

SECTION 2116. OPERATION OF AIRPORT. The City agrees to operate, maintain, and keep in good repair the areas and facilities provided by the City for the common use of the tenants and public in accordance with the practices of a reasonable prudent airport operator. The City agrees to use its best efforts to keep the Airport free from obstructions and to do all things reasonably necessary for the safe, convenient, and proper use of the Airport by those who are authorized to use the same. The City agrees to maintain and operate the Airport in accordance with all applicable standards, rules, and regulations of the FAA.

SECTION 2117. NO ASSIGNMENT OR SUBCONTRACTING WITHOUT CITY APPROVAL. The Developer may not assign this Agreement or subcontract all or substantially all of Developer's obligations hereunder without first obtaining the written approval of the City, provided that the Developer may assign this Agreement without such approval to any corporation or partnership in which it has fifty percent (50%) or more beneficial interest or ownership interest or to any limited partnership in which the Developer or a permitted assign has an interest in fifty percent (50%) or more of the general partnership interest in said limited partnership. The Developer shall submit a written request to the City together with evidence demonstrating the proposed assignee's or subcontractor's sufficient financial capacity and experience to assume Developer's obligations hereunder. No assignment or subcontract shall be made or shall be effective unless the Developer shall not be in default of any of the other terms, covenants and obligations contained in this Agreement. In the event of an assignment consistent with the provisions of this section, the Developer, upon consummation thereof, shall be discharged from all obligations herein contained.

SECTION 2118. NOTICES. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to:

City of Kansas City, Missouri
Kansas City International Airport
601 Brasilia Avenue
P.0. Box 20047
Kansas City, Missouri 64153-0047

All notices, demands and requests by the City to the Developer shall be sent by certified mail, return receipt requested, addressed to:

Vantage Airport Group, U.S.
295 Madison Avenue
New York, NY 10017

The parties, or either of them, may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to the Developer or to the City.

SECTION 2119. USE OF RECYCLED AND ENVIRONMENTALLY PREFERABLE PRODUCTS. It is the policy of the City to encourage and prefer the use of recycled and environmentally preferable products to the fullest extent possible and practicable consistent with good business practices, and that all Developers, licensees, and Sublessees shall perform any and all obligations hereunder in a manner consistent with such policy.

SECTION 2120. ACCORD AND SATISFACTION. The payment by the Developer or the receipt by the City of a lesser amount than the Concession Fee stipulated in this Agreement may be, at the City's sole option, deemed to be on account of the earliest due of first: (1) any interest, service charges and late fees and second (2) any stipulated Concession Fee (beginning with earliest owing fee), notwithstanding any instruction by or on behalf of the Developer to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and the City may accept such check or payment without prejudice to the City's right to recover the balance of such Concession Fee or pursue any other remedy available in this Agreement or at law.

SECTION 2121. ESTOPPEL STATEMENTS

A. Developer must deliver. Within ten (10) days after request therefor by the City, the Developer shall deliver, in recordable form, an estoppel statement certifying that this Agreement is in full force and effect, the date of the Developer's most recent payment of the Concession Fee, and that the Developer has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested by the City.

B. Failure to deliver. If the Developer fails to deliver the requested estoppel statement to the City within the specified period, the following shall be deemed conclusive: (1) this Agreement is in full force and effect, without modification, except as may be represented by the City; (2) there are no uncured defaults in the City's performance and the Developer has no right of offset, counterclaim or deduction against the fees payable under this Agreement; and (3) no more than one month's MAG has been paid in advance. Such conclusions shall be binding upon the Developer. Notwithstanding these conclusions, the Developer's failure to deliver the requested estoppel statement shall constitute a breach of this Agreement.

SECTION 2122. AUTHORITY. If the Developer signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Agreement on behalf of the Developer does hereby covenant and warrant that the Developer is a duly authorized and existing entity, that the Developer has and is duly qualified to do business in Missouri, that the Developer has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of the Developer are authorized to do so. Upon the City's request, the Developer shall provide the City evidence reasonably satisfactory to the City confirming the foregoing representations and warranties.

SECTION 2123. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto not withstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate unexecuted pages of the counterparts may be discarded, and the remaining pages assembled as one document.

SECTION 2124. BROKERS. The Developer warrants and represents to the City that the Developer has not had any contact or dealings regarding the use of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Agreement. In the event that any broker of finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Developer shall be responsible for such commission or fee and shall release, indemnify, defend, and hold harmless the City from any and all claims, demands, actions, suits, causes of action, judgments, liabilities, losses, damages, costs, and expenses arising from the Developer's dealings and interactions with any broker, finder or person who could claim a

right to a commission or finder's fee. The provisions of this Section shall survive any termination or expiration of this Agreement

SECTION 2125. ENTIRE AGREEMENT. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto and all other representations of statement heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors, and assigns, have executed this Agreement the day and year first above written.

Approved as to form:

_____

Assistant City Attorney

KANSAS CITY, a municipal corporation of Missouri

_____

Patrick Klein
Director of Aviation

Date: _____

VANTAGE AIRPORT GROUP, US, a Delaware corporation

By: _____

Title: _____

Date: _____

EXHIBIT A

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "A" and make any necessary changes without further City Council approval.

PERFORMANCE AND MAINTENANCE BOND

Project Number _____

Project Title _____

KNOW ALL MEN BY THESE PRESENTS: That _____, as PRINCIPAL (CONTRACTOR), and _____, (SURETY), licensed to do business as such in the State of Missouri, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns unto Kansas City, Missouri, a constitutionally chartered municipal corporation, (OWNER), as obligee, in the penal sum of _____ Dollars ($ _____) for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has entered into a Contract with OWNER for_____ which Contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract including all duly authorized changes thereto, and including any maintenance requirements contained therein, according to all the terms thereof, including those under which CONTRACTOR agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of workman required to execute the Contract and, further, shall defend, indemnify, and hold harmless OWNER from all damages, including but not limited to, liquidated damages, loss and expense occasioned by any failure whatsoever of said CONTRACTOR and SURETY to fully comply with and carry out each and every requirement of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect.

WAIVER. That SURETY, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder, shall in any way affect the obligations of this Bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the Contract or the Work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the ____ day of _____, 20__.

CONTRACTOR

Name, address and facsimile number of Contractor

_____

_____

_____

_____

I hereby certify that I have authority to execute this document on behalf of Contractor.

By: _____

Title: _____

(Attach corporate seal if applicable)

SURETY

Name, address and facsimile number of Surety:

_____

_____

_____

_____

I hereby certify that (1) I have authority to execute this document on behalf of Surety; (2) Surety has an A.M. Best rating of A-, V, or better; (3) Surety is named in the current list of "Companies Holding Certificates of Authority as Acceptable Reinsuring Companies: as published in Circular 570 (most current revision) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and (4) Surety is duly licensed to issue bonds in the State of Missouri and in the jurisdiction in which the Project is located.

By: _____

Title: _____

Date: _____

(Attach seal and Power of Attorney)

CITY OF FOUNTAINS
HEART OF THE NATION

KANSAS CITY
MISSOURI

PAYMENT BOND

Project Number _____

Project Title _____

KNOW ALL MEN BY THESE PRESENTS: That _____, as PRINCIPAL (CONTRACTOR), and _____, (SURETY), licensed to do business as such in the State of Missouri, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns unto Kansas City, Missouri, a constitutionally chartered municipal corporation, (OWNER), as obligee, in the penal sum of _____ Dollars ($_____) for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

CONTRACTOR has entered into a contract with OWNER for _____, which Contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if in connection with the Contract, including all duly authorized modifications thereto, prompt payment shall be made to all laborers, subcontractors, teamsters, truck drivers, owners or other suppliers or for equipment employed on the job, and other claimants, for all labor performed in such work whether done for CONTRACTOR, a subcontractor, SURETY, a completion contractor or otherwise (at the full wage rates required by any law of the United States or of the State of Missouri, where applicable), for services furnished and consumed, for repairs on machinery, for equipment, tools, materials, lubricants, oil, gasoline, water, gas, power, light, heat, oil, telephone service, grain, hay, feed, coal, coke, groceries and foodstuffs, either consumed, rented, used or reasonably required for use in connection with the construction of the work or in the performance of the Contract and all insurance premiums, both for compensation and for all other kinds of insurance on the work, for sales taxes and for royalties in connection with, or incidental to, the completion of the Contract, in all instances whether the claim be directly against CONTRACTOR, against SURETY or its completion contractor, through a subcontractor or otherwise, and, further, if CONTRACTOR shall defend, indemnify and hold harmless OWNER from all such claims, demands or suits by any such person or entity, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Any conditions legally required to be included in a Payment Bond on this Contract, including but not limited to those set out in §107.170 RSMo.are included herein by reference.

SURETY agrees that, in the event that CONTRACTOR fails to make payment of the obligations covered by this Bond, it will do so and, further, that within forty-five (45) days of receiving, at the address given below, a claim hereunder stating the amount claimed and the basis for the claim in reasonable detail, it (a) will send an answer to the claimant, with a copy to OWNER stating the amounts that are undisputed and the basis for challenging any amounts that are disputed, and (b) will pay any amounts that are undisputed. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

While this Bond is in force, it may be sued on at the instance of any party to whom any such payment is due, in the name of OWNER to the use for such party. OWNER shall not be liable for the payment of any costs or expenses of any such suit.

No suit shall be commenced or pursued hereunder other than in a state court of competent jurisdiction in Jackson, Clay or Platte County, Missouri, or in the United States District Court for the Western District of

Missouri.

WAIVER. That SURETY, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder, shall in any way affect the obligations of this Bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the Contract or the Work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the _____ day of_____ _____, 20____.

CONTRACTOR
Name, address and facsimile number of Contractor

_____
_____
_____
_____

I hereby certify that I have authority to execute this document on behalf of Contractor.

By: _____
Title:_____

(Attach corporate seal if applicable)

SURETY
Name, address and facsimile number of Surety:

_____
_____
_____
_____

I hereby certify that (1) I have authority to execute this document on behalf of Surety; (2) Surety has an A.M. Best rating of A-. or better; (3) Surety is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (most current revision) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and(4) Surety is duly licensed to issue bonds in the State of Missouri and in the jurisdiction in which the Project is located.

By:_____
Title:_____
Date:_____

(Attach seal and Power of Attorney)

PERFORMANCE BOND

EXHIBIT B

TENANT DESIGN STANDARDS

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "B" and make any necessary changes without further City Council approval.

EXHIBIT C

PREMISES

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "C" and make any necessary changes without further City Council approval.

EXHIBIT D

CONSTRUCTION SCHEDULE

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "D" and make any necessary changes without further City Council approval.

EXHIBIT E

CONSTRUCTION INSTRUCTIONS

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "E" and make any necessary changes without further City Council approval.

EXHIBIT F

FORM OF MONTHLY REPORT

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "F" and make any necessary changes without further City Council approval.

EXHIBIT G

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "G" and make any necessary changes without further City Council approval.

STORM WATER BEST MANAGEMENT PRACTICES

The Airport operates under the requirements of a National Pollutant Discharge Elimination System ("**NPDES**") Permit issued by the Missouri Department of Natural Resources ("**MDNR**"). The NPDES Permit imposes controls that assure that the Airport storm water discharges meet applicable water quality standards. NPDES controls are implemented at the Airport by operation of the Airport Storm Water Pollution Prevention Plan ("**SWPPP**"). Under the terms of the Permit, the Airport is responsible to the State of Missouri for all industrial and storm water discharges origination on Airport property. Each tenant is responsible to the Airport for contributions to the Airport industrial and storm water that originate for the tenant's leases property and from the tenant's activities anywhere on Airport property.

The following Best Management Practices ("**BMP**") require conformity to NPDES Permit mandates for activities that take place on Airport property. These BMP's apply to Airport departments, tenants, and all individuals (persons) whose activities could contribute to industrial or storm water discharges from Airport property. Airport departments and tenants are responsible for the actions of their personnel, contractors, supplies, services, providers, holders of operating permits, and all others who enter Airport property under their authorization.

1. All vehicles operated on the Airport shall be maintained in good condition at all times and be free of oil and gas leaks.

2. Each tenant operator shall keep individual areas clean pf vehicle liquid spills.

3. No tenant shall permit or cause to be permitted the discharge of flammable or combustible liquids or any waste liquid containing crude petroleum or its products into or upon any, street, highway, drainage canal, ditch, storm drainage system, lake, waterway or ground.

4. Outside repairs, servicing, washing or adjustments to ground vehicles which could cause pollutants, including by not limited to grease, oil, fuel, detergents, etc., to enter storm water systems is prohibited.

5. Tenants shall properly maintain fuel systems and oil water separators as to prevent discharge of petroleum contaminants to the Airport's storm water discharge systems.

6. Outside use of soaps, surfactants or materials that would ultimately enter the storm water and negatively impact the Airport NPDES permit is prohibited.

7. Tenant will be responsible for initiating immediate containment of spills and immediate cleanup/remediation of releases that can or will impact storm water systems. Note: Application of oil dry on a petroleum sill without subsequent removal/disposal of oil dry from pavement does not constitute acceptable cleanup.

8. All spills, irrespective of exceeding environmental regulation reportable quantities, that could or have entered the storm water systems shall be reported to Airport immediately following initial actions taken to contain and/or cleanup the release. In the event that a release is deemed to be beyond the lessee's ability to safely address or presents an immediate hazard to life, property or impact or storm water systems the Airport Communications Center shall be notified immediately.

9. The application of Aircraft Deicing Fluid ("**ADF**") is authorized on carrier and cargo aprons only. Any unused or out of specification ADF will be disposed of off Airport to include the ADF impact water (rinsate) from the cleaning of tanks and vehicles. Any inadvertent loss of ASF fluid that was not sprayed on an aircraft during winter operations constitutes a spill and will be cleaned up and disposed of in the same manner as a grease/oil spill.