

CONSOLIDATED  
RENTAL CAR FACILITY  
  
LEASE AGREEMENT

by and between

THE CITY OF SAN ANTONIO, TEXAS

and

\_\_\_\_\_

DATE OF EXECUTION:

\_\_\_\_\_

EFFECTIVE DATE:

\_\_\_\_\_

DATE OF TERMINATION:

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Exhibit I - CFC Remittance Form

Exhibit J - Operations Manual *[to be added as exhibit when complete]*

## CONSOLIDATED RENTAL CAR FACILITY LEASE AGREEMENT

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF BEXAR

THAT, this CONSOLIDATED RENTAL CAR FACILITY LEASE AGREEMENT (“Lease Agreement”) is made and entered into on the date of countersignature by the City (“Effective Date”) by and between the City of San Antonio, Texas, a municipal corporation and home-rule municipality (hereinafter defined and referred to as “City”) , by and through its City Manager pursuant to Ordinance \_\_\_\_\_ passed and approved on \_\_\_\_\_ and \_\_\_\_\_, a [type of entity] authorized to conduct business in the State of Texas (hereinafter referred to as “Operator”).

WITNESSETH:

WHEREAS, the City, Operator, and On-Airport Rental Car Operators serving San Antonio International Airport (“Airport”) desire to enter into similar Lease Agreements, for the purpose of planning, developing, financing, constructing and operating a Consolidated Rental Car Facility (“CONRAC”) to serve the traveling public and the rental car industry; and

WHEREAS, the City intends to finance the design and construction of the Project as defined herein and related improvements through the issuance of bonds secured by revenues from the collection of Customer Facility Charges (“CFCs”); and

WHEREAS, On-Airport Rental Car Operators are required to execute non-exclusive Concession Agreements with the City; and

WHEREAS, Off-Airport Rental Car Permittees shall not be allowed to operate buses or any other mode of transportation to and from the Airport terminals, but shall be required to use the CONRAC for pick up and drop off of all its customers;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the Parties hereby agree as follows:

## ARTICLE 1 DEFINITIONS

The capitalized terms used in this Lease Agreement shall for all purposes have the meanings specified in this **Article 1**, unless a different definition is given such term in the Bond Documents or the context clearly requires otherwise. Other terms may be defined elsewhere in this Lease Agreement, the Bond Documents or the Concession Agreement. In case of conflicting language in the definitions, priority of meaning for the definition shall be in the following order: first, Bond Documents, second, the Lease Agreement, and lastly, the Concession Agreement. The City will conform the Lease Agreement to the terms and condition of the Bond Documents.

**“Administrative Costs Fund”** means the fund the fund of that name established pursuant to **Section 5.10** of the Indenture of Trust.

**“Affiliate”** means any Person, directly or indirectly controlling or controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

**“Airport”** means the San Antonio International Airport, as depicted in the attached **Exhibit A**.

**“Airport Concession Disadvantaged Business Enterprise” (“ACDBE”)** is defined in the Concession Agreement.

**“Airport Customer”** means:

- (i) any person who enters into a motor vehicle rental agreement with Operator or takes delivery of a rental car from Operator at the CONRAC; or
- (ii) any person who enters into a motor vehicle rental agreement or takes delivery of a rental car at another Operator location (other than the CONRAC), that is located within a three (3) mile distance from the Airport boundary line as depicted on **Exhibit 2** of the Concession Agreement but excluding any persons that meet either of the following criteria:
  - a. any Persons who have a valid Texas Driver’s License with an address in Bexar County, Texas or adjoining counties as depicted on **Exhibit 1** of the Concession Agreement; or
  - b. any person who initials immediately adjacent to the following statement which shall be prominently shown in the contract: “I certify that I did not arrive at the San Antonio International Airport within the past 12 hours.” Operator understands and agrees all contracts shall be deemed an Airport Customer car rental transaction and subject to the CFC, unless containing the initialed statement described within this subparagraph that qualifies the contract for the above exclusion.

**“Airport Parking Operating Costs”** means and includes costs not to exceed \$8,500,000.00 to compensate the City for (i) the loss of revenues reasonably estimated by the City which will result from the loss of the existing short term parking garage (which is being demolished to construct the Facility) until such time as the Public Parking Area (which is being constructed to replace the existing short term parking garage) is completed and open for public parking; and (ii) the additional actual costs the City incurs relating to providing shuttle service for passengers and employees to other parking areas on the Airport property during construction of the Facility. Airport will prepare yearly reports of actual loss of revenues and shuttle service costs incurred during the construction of the Facility.

**“Alteration”** is defined in **Section 12.1**.

**“Applicable Law”** means all applicable laws, ordinances, orders, directives, rules, codes and regulations of all Governmental Authorities and all grant assurances provided by City to any Governmental Authorities in connection with City’s ownership or operation of the Airport, as the same may be amended, modified or updated from time to time. “Applicable Law” includes Environmental Laws.

**“Authorities”** means the United States of America, and any state, county, city or other local governmental or quasi-governmental authorities, or any department, office, or agency of the foregoing now existing or hereafter created.

**“Aviation Director”** means the Aviation Director of the City of San Antonio or his designee.

**“Best Management Practices”** means those environmental or operational standards or guidelines specifying common and accepted practices appropriate for the types of businesses the Operator, its contractors, agents and/or vendors engage in on the Leased Premises, or such standards or guidelines as have been articulated by pertinent trade associations, professional associations or regulatory agencies, including (but not limited to) Best Management Practices developed by the CONRAC Manager in cooperation with the Operators and the City. Best Management Practices shall be subject to approval by the Aviation Director.

**“Bonds”** means the bonds to be issued by the City pursuant to the Bond Documents (whether in one or more series) from time to time pursuant to the terms of the Bond Documents for purposes of financing Project Costs related to the initial design and construction of the Project and costs for future repairs or improvements to the Project as well as any bonds issued to refund such bonds. It is anticipated that the Bonds shall be initially issued in two (2) series including special facilities bonds to finance the CONRAC which will primarily be secured by a pledge of CFCs and general airport revenues bonds to finance the Public Parking Area primarily paid by CFCs.

**“Bond Documents”** means one or more trust indentures entered into between the City and the Trustee, for the benefit of the owners of the Bonds, the ordinance or ordinances of the City authorizing the issuance of the Bonds, and all other documents and agreements related to the issuance thereof.

**“Bond Year”** shall be the period commencing each July 1 through the following June 30.

**“Brand”** means the car rental brand(s) or trade name(s) that Operator is authorized to operate at the

Airport as set forth in **Section 10.1.2** hereof, or as amended from time to time. The total number of brands allowed to operate at the CONRAC shall not exceed thirteen (13) Brands at any given time during the Term of this Lease Agreement and the Concession Agreement.

“**Car-Sharing**” means a model of renting a vehicle in which customers rent vehicles for a short period of time, usually on an hourly basis and/or through a membership service of a car rental company. Car-Sharing at the Airport is expressly permitted only by existing Operators as identified and allowed in **Section 6.3** of the Concession Agreement and **Section 10.1.2** of this Lease Agreement, and to no others.

“**Certificate of Occupancy**” means the document issued by the City certifying that the Facility, or applicable portion thereof, is in compliance with applicable building codes and other laws, and has been determined to be in a condition suitable for occupancy.

“**CFC**” – See “Customer Facility Charge” below.

“**CFC Eligible Routine Maintenance**” is defined in **Section 15.3.1**.

“**CFC Renewal and Replacement Fund**” means the fund of that name established pursuant to **Section 5.11** of the Indenture of Trust.

“**CFC Report**” means the report produced at least annually by the City to identify the status of CFC collections and remittances, forecast the next year’s CFC collections and requirements for debt service fund balances and other obligations established in the Bond Documents, recommend the new CFC rate, Facility Maintenance Fee rate, and provide the Contingent Fee Statement.

“**CFC Surplus Fund**” is the fund of that name established pursuant to **Section 5.12** of the Indenture of Trust.

“**City CFC Ordinance**” means Ordinance No. 2012-03-08-0173 adopted by the City Council on March 8, 2012, as such Ordinance may be amended and supplemented from time to time, and any such other ordinances adopted by the City Council from time to time with respect to the imposition of the Customer Facility Charge.

“**City Council**” means the City Council of the City of San Antonio, Texas.

“**City Standards**” means the Airport Rules and Regulations, the Airport Security Plan, the Regulations for Airport Construction, the CONRAC Tenant Design Criteria Manual (also known as, and referred to herein, as the “**Tenant Design Manual**” contained within **Exhibit B** of this Lease Agreement), and any other similar document establishing requirements and/or standards for design and construction at the Airport, as they now exist or may be amended from time to time.

“**Commencement Date**” means the date on which the City issues a Temporary Certificate of Occupancy and turns over to the Operator the Exclusive Use Premises for commencement of construction of the Operator Initial Tenant Improvements. Upon the Commencement Date, the Operator recognizes and authorizes the City’s contractor reasonable access to the Exclusive Use Premises to complete construction and punch-list items within the Exclusive Use Premises. Such date

may be adjusted at the sole discretion of the Aviation Director upon consultation with the Operator.

**“Common Use Area”** means those portions of the CONRAC not falling within the Exclusive Use Premises for any of the Operators granted rights to operate a Rental Car Concession in the CONRAC, including but not limited to: (i) the roof (both structure and covering/membrane), exterior walls, foundation and building structure of those portions of the CONRAC otherwise falling within the Exclusive Use Premises of the Operators; (ii) the pavements, canopies and other physical structures otherwise falling within the QTA Space portion of the Exclusive Use Premises of the Operators; (iii) the utilities systems serving the CONRAC up to the point of connection by any particular Operator; (iv) the Fuel Facilities, QTA Space and QTA Equipment; and (v) helix, loading docks, trash pick-up area, non-exclusive parts of the Customer Service Center, staging areas, stockroom and blast walls, roadways, pedestrian skybridge, and walkways necessary for ingress and egress.

**“Concession Agreement”** means that certain concession agreement between the City and each of the Operators, together with the exhibits thereto, as amended from time to time. The term “Concession Agreement” specifically includes each successor Concession Agreement to which the City and each of the Operators may be a party.

**“Consolidated Rental Car Facility” or “CONRAC”** means the consolidated rental car facility located at the Airport (excluding the Public Parking Area), including the Exclusive Use Premises and the Common Use Area. The CONRAC is depicted in **Exhibit D**, attached hereto and forming a part hereof.

**“CONRAC Management Contract”** means the agreement between the Operators and the CONRAC Manager approved by the Aviation Director in writing to provide for the performance of Routine Maintenance and Major Maintenance for the CONRAC and the management of all operations of and activities in the CONRAC. The City shall be a third-party beneficiary of the CONRAC Management Contract.

**“CONRAC Manager”** means the party chosen by the Operators to operate and maintain the CONRAC pursuant to **Section 14.1** of this Lease Agreement.

**“CONRAC Routine Maintenance”** means all actual costs of operating and maintaining the CONRAC, including, but not limited to, the following: (i) the actual costs incurred in performing maintenance and repairs that does not qualify as Major Maintenance, including a reasonable allocation of City administrative costs for work performed by City; (ii) the cost of the CONRAC Manager and associated support staff responsible for supervising the operation and management of the CONRAC; (iii) CONRAC liability insurance costs (including pollution liability) or other City approved insurance purchased through the CONRAC Manager on behalf of the Operators; (iv) Utilities Costs for the CONRAC, including utilities costs for the pedestrian skybridge (except for any separately metered utilities costs for Operator’s Exclusive Use Premises and for the Public Parking Area); and (v) administrative costs. CONRAC Routine Maintenance specifically excludes any such costs incurred by the City with respect to its own direct responsibilities for the Public Parking Area. CONRAC Routine Maintenance includes both CFC Eligible Routine Maintenance and Non-CFC Eligible Routine Maintenance.

**“Contingent Fee”** means the additional payment obligations required to fund any deposits to the first

seven (7) funds identified in clauses (1) through (7) of **Section 3.3** in the event CFC revenues and amounts available in the CFC Surplus Fund are not sufficient to make such required deposits in full as required by the Bond Documents.

**“Contingent Fee Estimate”** is defined in **Section 3.4.2**.

**“Contingent Fee Statement”** is defined in **Section 3.4.3**.

**“Costs of CFC Administration”** means any and all costs incurred or paid by the City in connection with the administration of the CFC, the Bonds and the Bond Documents or the satisfaction of any and all non-financial obligations under the Bonds and the Bond Documents (or any of them). Without limiting the generality of the foregoing, Costs of CFC Administration include, but are not limited to, bank charges, the cost of a Trustee responsible for the collection, handling and disbursement of the CFC and servicing the Bonds, the cost of CFC audits, the cost to prepare the CFC Reports, rating agency fees, and any costs related to municipal bond insurance policies (other than the initial insurance premium) obtained in connection with the Bonds, if any.

**“Covered Ready/Return Area”** means the covered Ready/Return Areas of the CONRAC as depicted in **Exhibits E-1, E-2, and E-3**.

**“Customer Facility Charge” or “CFC”** means the customer facility charge or charges imposed by the City pursuant to the City CFC Ordinance or the Bond Documents on Transactions occurring on or about the Airport, and required to be collected by the Operator pursuant to **Article 6** of this Lease Agreement.

**“Customer Service Center”** means the customer service area of the CONRAC that includes, but is not limited to, customer service counters, back-office support areas, public areas, vertical circulation areas, and the pedestrian skybridge for the operation of a Rental Car Concession.

**“Date of Beneficial Occupancy” or “DBO”** means the date on which the Aviation Director declares that the CONRAC is open for business and can begin serving the public. There will be one DBO for the entire CONRAC. No Operator may begin rental car operations in the CONRAC until the DBO.

**“Days”** (whether capitalized or not) unless otherwise specified, means calendar days, not business days.

**“Deadline for Substantial Completion”** means the date identified by the Aviation Director for the Operators’ substantial completion of their Initial Tenant Improvements, which date shall be 180 days following the Commencement Date. Such date may be adjusted upon agreement between the Aviation Director and the Operators.

**“Debt Service Coverage Fund”** means the fund of that name established pursuant to **Section 5.07** of the Indenture of Trust.

**“Debt Service Fund”** means the fund of that name established pursuant to **Section 5.05** of the Indenture of Trust.



**“Debt Service Reserve Fund”** means the fund of that name established pursuant to **Section 5.06** of the Indenture of Trust.

**“Effective Date”** means the date that the respective documents are fully executed by all parties to the applicable agreement.

**“Environmental Audit”** is defined in **Section 19.1**.

**“Environmental Laws”** is defined in **Section 19.1**.

**“Exclusive Use Premises”** means those portions of the CONRAC, including in the Customer Service Center and the Ready/Return Area, as determined in accordance with **Article 4** herein. The Exclusive Use Premises assigned to the Operator are for the use and occupancy of the Operator to the exclusion of all others.

**“Facility”** means the structure to be constructed by the City that consists of the CONRAC and the Public Parking Area depicted in **Exhibit D**.

**“Facility Maintenance Fee”** means the fee that must be levied by the Operator, together with other Operators, to recover the cost of Non-CFC Eligible Routine Maintenance together with the projected shortfalls to funding of CFC Eligible Routine Maintenance.

**“Facility Major Maintenance”** is defined in **Section 15.1.1**.

**“Family”** means a group of Brands or trade name(s) owned or operated by an Operator at the Airport as set forth in **Section 10.1.2**, or as amended from time to time.

**“Fuel Facilities”** means the specific improvements installed on or about the Facility for purposes of fueling rental car vehicles by the Operators. The Fuel Facilities specifically include all underground storage tanks, underground and above ground piping, related underground and above ground structures and equipment, including without limitation tank fill ports, fuel dispensers, spill containment structures, oil-water separators, storm water management systems, required network of monitoring wells, leak prevention and detection systems, and the surrounding areas used in connection with the operation of the Fuel Facilities, including without limitation areas of Hazardous Substance transfer, dispensing, and containment systems.

**“Good Standing”** means, with respect to an Operator, that the Lease Agreement, Concession Agreement, and Operators Member Agreement to which an Operator is a party are not in default at the time that a determination of good standing is made.

**“Governmental Authorities”** means federal, state and municipal governments, authorities and agencies and their respective agencies, departments, authorities and commissions. “Governmental Authorities” shall specifically include, without limitation, the City, the State of Texas, the United States Department of Transportation (“DOT”), the Federal Aviation Administration (“FAA”) and the Transportation Security Administration (“TSA”).

**“Gross Revenues”** is defined in the Concession Agreement.

**“Ground Rent”** is defined in **Section 6.1**.

**“Hazardous Substance”** is defined in **Section 19.1**.

**“Indenture of Trust”** means the Indenture of Trust, dated as of July 1, 2015, by and between the City and the Trustee pursuant to which the Bonds and any Additional Bonds are issued, together with any Supplements or amendments thereto.

**“Initial Lease Period”** is defined in **Article 5**.

**“Initial Tenant Improvements”** is defined in **Section 2.2.1**.

**“Lease Site”** means that parcel of land shown on **Exhibit C**, on which land the Ground Rent will be calculated. The description and area set forth in this definition shall be subject to adjustment following completion of the Project to account for dedications and other adjustments to the Lease Site made as part of construction of the Project. The City will provide, by notice to the Operators, a revised description and final areas within ninety (90) days following completion of the Project.

**“Lease Term”** is defined in **Section 5.1**.

**“Lease Year”** is defined in **Section 5.1**.

**“Leased Premises”** means the Operators’ Exclusive Use Premises and Common Use Area.

**“Legal Requirements”** means all laws, statutes and ordinances, including building codes, zoning regulations, orders, rules, regulations and requirements (whether now or hereafter in effect) of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, which may be applicable to or have jurisdiction over the Facility, the sidewalks or streets adjacent thereto, and all requirements, obligations and conditions of all instruments of record on the date of this Lease Agreement and thereafter.

**“Lien”** means any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Facility or any Alteration, the ownership of which is retained by the City.

**“Light Vehicle Maintenance”** is defined in **Section 10.1.1**.

**“Major Maintenance”** means the Engineer’s Report required under **Section 15.9**, and any single item, repair, replacement, renewal, or removal of improvements in, of, or to the CONRAC or any structural aspect of the Facility having a cost in excess of Ten Thousand Dollars (\$10,000) that (i) preserves, extends or restores the useful life in excess of five (5) years, and is beyond the regular, annual or more frequent upkeep of physical property (i.e., land, building, or equipment); or (ii) removes improvements at the expiration or termination of the Lease Agreement, or otherwise at the direction of City.

Major Maintenance includes the repair or replacement of failed or failing building components as

necessary to return the CONRAC to its currently intended use, to prevent further damage, or to make it compliant with changes in laws, regulations, codes, or standards. Routine Maintenance shall not be considered Major Maintenance. Items of Major Maintenance include, but are not limited to:

- (a) Repair or replacement of components of the Facility such as: roof, windows, generators, or utility distribution systems;
- (b) Repair or replacement (except to the extent required due to abuse or neglect by an Operator or Operators) of pumps or motors provided as part of the original outfitting of the CONRAC and not as a Tenant Improvement;
- (c) Repair or replacement of QTA systems and equipment;
- (d) Additions or changes to safety systems of the Facility such as: fire alarms, fire sprinklers, fire exits, or security systems;
- (e) Necessary changes to the Facility to meet local, state, and federal requirements, codes, and standards;
- (f) Repair or replacement of components of the Facility that are creating a threat to life, health, and safety of people;
- (g) Emergency repairs resulting from storm, flood or fire, and in particular, damage requiring immediate attention to prevent further damage or to restore the use of the Facility; or
- (h) Removal of above and underground fuel storage tanks, if required.

**“Market Share”** means an Operator’s most recent 12 month Gross Revenues as a percentage of the total Gross Revenues for the on-airport rental car operators for the same period.

**“New Entrant”** is defined in **Section 2.3**.

**“Non-CFC Eligible Routine Maintenance”** is defined in **Section 15.3.2**.

**“Non-RAC Concessionaire”** means any concessionaire granted rights to operate a concession other than a Rental Car Concession in the CONRAC. Non-RAC Concessionaire may include advertising, food and beverage, and newsstands.

**“Off-Airport Rental Car Permittees”** means any entity operating a rental car business off airport that picks up and drops off customers at the CONRAC. Off-Airport Rental Car Permittees’ activities on the Airport are governed by a permit with the Airport.

**“On-Airport Rental Car Operators”** means any entity having a Lease similar to this lease and a concession agreement similar to the Concession Agreement.

**“Operations Manual”** is defined in **Section 15.6**.

**“Operator”** means the particular entity executing this Lease Agreement and related agreements for the operation of a Rental Car Concession in the CONRAC. Operator includes all allowable Brands listed in **Section 10.1.2**, as amended from time to time, authorized to operate within the Operator’s Family under this Lease Agreement and any associated Car-Sharing programs.

**“Operator Property”** means trade fixtures, business equipment, furnishings, and signs of each respective Operator that have not been permanently affixed to the CONRAC or which otherwise remain the personal property of that Operator, the removal of which would not damage or affect the structural integrity or usability of the CONRAC.

**“Operator’s Pro Rata Share”** for any particular Operator, means the percentage determined by dividing (i) the total amount of Exclusive Use Premises leased by such Operator in the CONRAC by (ii) the total amount of Exclusive Use Premises leased to all Operators in the CONRAC, all of which space may be measured by the City in any reasonable and uniform manner. The Pro Rata Share may vary from time to time, but will not be readjusted by the Aviation Director more frequently than on a monthly basis. For purposes of determining the total amount of Exclusive Use Premises leased (but without in any manner releasing, waiving or otherwise absolving any potential claims for damages against any Operator in the Event of a Default), (i) space for which a lease terminates shall be treated as leased until the first full month following the date of such lease termination, and (ii) a lease rejected in bankruptcy shall be treated as terminating on the date the lease is rejected in the bankruptcy proceedings.

**“Operators”** means all entities, including the Operator, having executed a CONRAC lease agreement related to the operation of a Rental Car Concession in the CONRAC.

**“Operators Member Agreement”** means the agreement providing for the membership rights, requirements, obligations and procedures of the Operators with respect to (i) the operation and maintenance of certain areas of the CONRAC; (ii) the payment for such operation and maintenance costs for certain areas in the CONRAC to the extent such operation and maintenance is not paid for by CFC proceeds; (iii) the allocation and reallocation of the foregoing costs, as well as other Operator expenses; (iv) review, approve, and/or enter into agreements with third parties; and (v) the allocation and reallocation of space in the CONRAC that are not inconsistent with this Lease Agreement.

**“Operators’ Technical Representative”** means the third party firm and/or individual(s) (initially the firm of Jacobsen/Daniels Associates, LLC) responsible for coordinating among the Operators to ensure that Operators stay informed about the Project and that Operators’ interests are presented to the City during the Project.

**“Overflow Parking Area”** shall mean the uncovered roof parking level in the CONRAC depicted on **Exhibit E-4**.

**“Parties”** means the City and the Operator, collectively.

**“Percentage Fee”** shall have the meaning set forth in the Concession Agreement.

**“Performance Guarantee”** is defined in **Article 9**.

**“Person”** means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

**“Pre-Lease Agreement Environmental Condition”** is defined in **Section 19.1**.

**“Preliminary Financial Plan”** means the financial plan reflected on **Exhibit G** of this Lease Agreement that represents the City’s good faith efforts to estimate Project Costs, financial structure, and the initial CFC rate based on the information available prior to execution of this Lease Agreement.

**“Project”** means the Facility, including the CONRAC and the Public Parking Area, to be constructed by the City, plus necessary ingress and egress from the Airport terminal roadways as depicted in **Exhibit D** attached hereto and forming a part hereof.

**“Project Costs”** means any and all costs incurred or paid by City in connection with the Project, including but not limited to, design costs, permitting costs, construction costs, Initial Tenant Improvements (if funds are available), architectural and engineering fees, equipping capitalized interest for payment of interest on Bonds, Bond issuance and underwriting expenses, the funding of any reserves required in connection with Bonds, demolition associated with the Project, environmental costs, including remediation of environmental conditions discovered during construction of the Project, construction costs, costs associated with Project management, Operators’ Technical Representative, contract administration or construction management, and a reasonable allocation of administrative costs of the City associated with the design and construction of the Project.

**“Project Site”** means that parcel of land shown on **Exhibit C**, on which land the Project is to be constructed. The description and area set forth in this definition shall be subject to adjustment following completion of the Project to account for dedications and other adjustments to the Project Site made as part of construction of the Project. The City will provide, by notice to the Operators, a revised description and final areas within ninety (90) days following completion of the Project.

**“Public Parking Area”** means the levels of the Facility to be exclusively used as a City operated public parking facility.

**“Public Parking Area GARB Debt Fund”** means the fund of that name established pursuant to **Section 5.08** of the Indenture of Trust.

**“QTA”** means quick turn-around.

**“QTA Space”** means the quick turn-around area utilized by the Operators for purposes including but not limited to car washing, cleaning, fueling, and/or Light Vehicle Maintenance.

**“QTA Equipment”** means all equipment located in the QTA Space and used in connection with car washing, cleaning, fueling activities, and/or Light Vehicle Maintenance. The QTA Equipment includes, without limitation, the car washes and all associated equipment; vacuums; and dispensing systems for fuel, fluid, and/or compressed air.

**“Rate Covenant”** is defined in **Section 2.05** of the Indenture of Trust.

**“Ready/Return Area”** means those portions of the CONRAC utilized by the Operators for purposes of stacking, staging, returning, and delivering rental cars. Ready/Return Area includes both the Covered Ready/Return Area and the Overflow Parking Area.

**“Reimbursable City Costs”** is defined in **Section 6.3.1**.

**“Rental Car”** means any motor vehicle, regardless of fuel or power source, including, but not limited to, a passenger automobile, van, sport utility vehicle, pickup or other truck under 10,000 pounds gross vehicle weight, motorcycle or motor scooter, which can be legally driven on the public streets in San Antonio, Texas and made available for use, under any form of lease, rental contract or other agreement for temporary use.

**“Rental Car Concession”** means the right to operate a rental car concession at the Airport from the CONRAC on a non-exclusive basis for the purpose of arranging rental car services for the benefit of Airport Customers where such rental car service is furnished by the Operator.

**“Spill Prevention Control and Countermeasures Plan”** or **“SPCC Plan”** is defined in **Section 19.1**.

**“Storm Water Pollution Prevention Plan”** is defined in **Section 19.1**.

**“Subordinated Debt Fund”** means the fund of that name established pursuant to **Section 5.09** of the Indenture of Trust.

**“Substantial Completion”** or **“Substantially Complete”** means the stage in the progress of the construction when the Facility, or a designated part of the Facility, is sufficiently complete so that City and Operators can occupy or use portions of the Facility for its intended use.

**“Total Aggregate Initial Tenant Improvement Allowance”** is defined in **Section 2.3**.

**“Transaction”** means a distinct act of business between an Operator and an Airport Customer for rental of a Rental Car as authorized under its Concession Agreement. Each taking of possession of a Rental Car from an Operator under an ongoing contract for multiple rentals is deemed a distinct act of business for purposes of this definition; however, an exchange of vehicles under a single rental contract is not deemed to create a new Transaction.

**“Transaction Day”** means, with respect to any vehicle available for rent by any Operator, each twenty-four (24) hour period (or fraction thereof) that a vehicle is rented by an Airport Customer; provided, however, that if an Operator’s vehicle rental contract contains a grace period for the vehicle’s return at the end of such vehicle’s rental period of no more than fifty-nine (59) minutes, during which grace period such Operator will not charge a customer a further vehicle rental fee or other form of late return fee, then the CFC shall not be imposed during such grace period and such grace period shall not be considered a further Transaction Day. In the event of any inconsistency between this definition and the terms of the City CFC Ordinance, the terms of the City CFC Ordinance shall control.

**“Trustee”** means the financial institution identified in the Bond Documents to serve as the trustee for

the Bonds or any series thereof.

**“Utilities Costs”** means all the costs and expenses associated with the operation of the CONRAC, specifically including any costs associated with utilities provided to the CONRAC, and any services provided for the benefit of the Operators. Without limiting the generality of the foregoing, Utilities Costs specifically include electricity, communications, gas, water, sewer, garbage, recycling, and costs of connection thereto.

END OF ARTICLE

## ARTICLE 2 CONSTRUCTION OF PROJECT

The City shall construct the Project substantially in accordance with the plans and specifications as they may be amended during the construction process; provided, however, the Aviation Director shall have the right to make reasonable changes to the design of the Project as more specifically set forth in **Section 2.5** herein. City shall deliver the Exclusive Use Premises to Operator on the Commencement Date in accordance with this Article 2.

### **Section 2.1 PROJECT COSTS.**

The City will endeavor to complete the Project within a cost structure that is supported by CFC revenues as projected within the Preliminary Financial Plan as depicted on **Exhibit G** attached hereto and incorporated by reference, which exhibit shall be updated with actual costs expended upon completion of construction of the Facility.

### **Section 2.2 PROJECT BUILD-OUT IMPROVEMENTS (INITIAL TENANT IMPROVEMENTS) BY OPERATOR.**

#### **2.2.1 Design and Construction.**

The Operator shall be responsible for designing and constructing all improvements to the Operator's Exclusive Use Premises that the Operator deems necessary or desirable in connection with the Operator's operation of a Rental Car Concession from the CONRAC ("**Initial Tenant Improvements**"). The Operator shall comply with the design, construction and opening procedures set forth in the Tenant Design Manual attached hereto as **Exhibit B** in connection with the Operator's design and construction of the Operator's tenant improvements. The Initial Tenant Improvements shall be performed (i) in a good and workmanlike manner; (ii) in compliance with all Legal Requirements and the City Standards; and (iii) in a manner that will not unreasonably interfere with or disturb the City or the other Operators. Initial Tenant Improvements shall be completed, including commissioning, by the Deadline for Substantial Completion. The Operator specifically acknowledges and agrees that the one hundred eighty (180) days after the Commencement Date established by the City includes adequate time for construction of the Operator's Initial Tenant Improvements, including commissioning, during which the Operators (and each Operator) are expected to complete the installation of any furniture, trade fixtures and office equipment not completed as part of the Initial Tenant Improvements, complete all systems/process testing, and otherwise do anything and everything else necessary to be fully operational on the DBO.

#### **2.2.2 City Review Does Not Relieve Operator.**

The Operator agrees that nothing in the City's review and/or approval of the Operator's plans shall create responsibility or liability on the part of the City for their completeness, design sufficiency, or compliance with all Legal Requirements and the City Standards, all of which shall be the Operator's sole responsibility. Nor shall such review or approval constitute a waiver by the City of the right thereafter to require the Operator to correct any failure by the Operator to comply with any Legal Requirements later discovered by the City.

#### **2.2.3 Substantial Completion – Initial Tenant Improvements.**

The Operator agrees that its Initial Tenant Improvements shall be Substantially Complete no later than the Deadline for Substantial Completion; provided, however, said time period may be extended to the extent of delays directly caused by the City, the City's contractor and/or events beyond the reasonable control of the Operator.



#### **2.2.4 Final Completion – Initial Tenant Improvements.**

Notwithstanding that the Operator has substantially completed the Initial Tenant Improvements, the Operator shall diligently pursue the Initial Tenant Improvements to final completion, and shall completely finish the Initial Tenant Improvements no later than fourteen (14) days after the Deadline for Substantial Completion. The final completion of the Initial Tenant Improvements includes, but is not limited to, the completion of construction of the Operator’s Initial Tenant Improvements, as defined in the construction drawings, and resolution of all items on the deficiency list, prepared by the City.

#### **2.2.5 DBO.**

Operator shall have completed its Initial Tenant Improvements, installed all furniture, trade fixtures and office equipment, completed all systems/process testing, and otherwise be fully and completely ready to commence operations no later than the DBO. Operator specifically understands that the City intends that rental car operations shall commence from the CONRAC on the DBO regardless of whether the Operator or any other operator has completed its Initial Tenant Improvements and/or is ready to commence operations.

#### **2.2.6 2.2.6 As-Built Documents.**

The Operator shall deliver to Aviation Director not later than ninety (90) days after the DBO full and complete “as built” drawings of the Initial Tenant Improvements in electronic format and three (3) half-size hard copies, in commercially reasonable formats as determined by the City. For any equipment installed, the Operator shall deliver to the City, two (2) copies of the complete operations and maintenance manuals and warranty information provided to the Operator.

#### **2.2.7 2.2.7 Deadline Adjustment.**

Notwithstanding the foregoing, the Aviation Director may adjust any deadline stated above by written notice to Operator; provided, however, the City will not shorten the total Initial Tenant Improvements Construction Period.

### **Section 2.3 TENANT IMPROVEMENT REIMBURSEMENTS.**

The Trustee shall reimburse certain costs of Initial Tenant Improvements incurred by the Operators during the course of construction of the Project in an aggregate total amount (“**Total Aggregate Initial Tenant Improvement Allowance**”) not to exceed the lesser of: (i) six million dollars (\$6,000,000.00) or (ii) fifty percent (50%) of the total aggregate amount of Initial Tenant Improvements constructed by all Operators, to be allocated among the Operators as follows: (i) for each Operator who is not a party to a “Prior Concession Agreement” as that term is defined in the Concession Agreement (“**New Entrant**”), up to one percent (1%) of the Total Aggregate Initial Tenant Improvement Allowance; and (ii) for each Operator other than New Entrants, the remaining Total Aggregate Initial Tenant Improvement Allowance shall be allocated by market share based on calendar year 2017 Gross Revenues. Such costs may be reimbursed during construction if funds are available and/or in future years as funding is available.

To be reimbursed, the Operator shall comply with **Subsections 2.3.1 through 2.3.4** below:

#### **2.3.1 Reimbursement Request.**

The Operator shall provide to the Aviation Director documentation satisfactory to City that the costs were actually incurred, that the work consisted of Initial Tenant Improvements in the CONRAC, was

completed and paid for, and that reimbursement is requested in accordance with this Lease Agreement. The Operator's request for reimbursement shall include a copy of all paid invoices, billings, and/or cancelled checks for each cost claimed, attached to a certified statement that all amounts claimed were paid to third-party design professionals, vendors or contractors. No amount will be paid to the Operator for its own in-house costs or expenses.

### **2.3.2 Fully Documented Claim.**

The Operator shall submit its fully documented claim for Initial Tenant Improvement reimbursement to the Aviation Director, which claim shall be submitted no later than two hundred seventy (270) days after the DBO. Any request made more than two hundred seventy (270) days after the DBO will not be considered or paid. The Aviation Director will review timely submitted claims and, based on the approved claims, will prepare a schedule of Initial Tenant Improvement Allowances in accordance with **Section 2.3** above. Notwithstanding the authorized allocation to Operator in this Section 2.3.2, the reimbursement to the Operator shall not exceed the lesser of (1) the qualifying costs of Initial Tenant Improvements made and properly documented in a timely claim by the Operator or (2) the Operator's allocation. The reimbursement schedule will be submitted to the Operators.

### **2.3.3 Initial Tenant Improvement Reimbursements.**

The Aviation Director will retain approved Initial Tenant Improvement reimbursement claims for submission to the Trustee for payment based on availability of funds as determined in the CFC Report. If full reimbursement is not available, reimbursements to each Operator will be pro rated as set forth in the schedule provided in **Section 2.3.2** above. Any funds not timely claimed shall be retained in the CFC Surplus Fund in accordance with the terms of the Bond Documents.

### **2.3.4 Submission of As-Built Documents for Reimbursement.**

Operator shall submit as-built documents per **Section 2.2.6** in order to receive the final Initial Tenant Improvement reimbursement payment.

## **Section 2.4 VACATE TERMINAL.**

The Operator, at its sole cost and expense, shall vacate the Operator's leased premises and kiosks in the Airport terminal covered by its prior concession agreement. Operator shall leave the leased premises in broom clean and good condition and repair, obsolescence and ordinary wear and tear excepted, and remove all of its personal property therefrom. The Operator shall vacate its leased premises in the Airport Terminal not later than ten (10) days after the DBO unless vacated earlier in accordance with the terms of the prior concession agreement. In addition, no rental car operator shall be permitted to operate buses or other commercial vehicles, including their rental car fleet, to and from the Airport's terminal buildings' curbsides on or after the DBO.

## **Section 2.5 CHANGES.**

The Parties shall have the right to make reasonable changes to the construction of the Project as more specifically set forth in this Section.

### **2.5.1 City Initiated Changes During Construction.**

After the Effective Date of this Lease Agreement, the City shall have the right to make reasonable changes to the Project for purposes of facilitating the construction of or otherwise increasing the efficiency of the Project, provided that any such change does not materially and adversely affect any Operator's intended operations. With regard to City initiated changes, the City will endeavor not to create an unfair advantage or disadvantage among Operators.

The City may only make material changes to the Project with the concurrence of the Operators. The Operators agree that concurrence with City proposed Project changes cannot be unreasonably withheld, denied, or delayed. The process of determining concurrence on material changes will be as follows:

1. The City will provide the Operators with Proposed Changes Information concerning the nature of the changes; the information will include Project budget impacts, schedule impacts, and operational implications.
2. The City will conduct a teleconference or meeting to discuss the proposed changes.
3. The Operators will be deemed to concur with the proposed changes unless eighty (80%) percent of the Operators in number representing eighty (80%) of the CFCs paid during the most recent twelve (12) month period for which data is available notify the City in writing that they do not concur with the proposed change.

Notice of non-concurrence with a City proposed Project change must be received within one (1) business day after the teleconference or meeting. In the event of a lack of Operators' concurrence on City proposed Project changes, the Project will remain unchanged unless the change involves life/safety or anti-competitive issues or interference with Airport operations. In the event of a City proposed change addressing a life/safety or anti-competitive issue or interference with Airport operations, the Operators' concurrence is advisory and the City may proceed with the Project change at its sole discretion.

### **2.5.2 Operator-Initiated Project Changes.**

The Operator shall not have any right to make any changes to the Project, other than changes to Initial Tenant Improvements in accordance with the process set forth in **Section 12.1**; however, the Operators may, through the Operators' Technical Representative, submit requested changes to the Project to the City for consideration.

### **Section 2.6 PERMITS.**

The City shall obtain all necessary permits associated with the Project, including a Certificate of Occupancy prior to the DBO; provided, however, that the City shall not be responsible for obtaining permits associated with the Initial Tenant Improvements or any Alterations (specifically including any Certificate of Occupancy associated with such Initial Tenant Improvements).

### **Section 2.7 CONSULTATIONS.**

The Operator shall from time to time consult with the City during the design and construction of the Facility to obtain information required for construction build-out of the Initial Tenant Improvements. The City shall have no obligation to design, construct, or install any improvements or fixtures within the Operator's Exclusive Use Premises that are not included within the City's plans and specifications for the Facility. The Operator and the Operator's third-party design professionals and others as necessary shall attend construction progress meetings to coordinate construction activities with City. It is the Operator's duty to keep informed on the progress of Project construction. The Operator shall attend such periodic meetings with City representatives for the purpose of keeping informed on the status of the Project and to be informed as to the construction start date for Initial Tenant Improvements discussed above.

**Section 2.8 PAYMENT BONDS.**

Prior to the initiation by the Operator of Initial Tenant Improvements construction work on the Leased Premises, the Operator shall furnish the following bond to cover its construction contract work:

A payment bond in an amount not less than one hundred percent (100%) of the estimated contract price, conditioned upon the payment by the Operator for all materials, labor, supplies and transportation furnished in the performance of the work contracted to be done by the terms of said contract, and for any work or labor of any kind done thereon, by a surety authorized to do business as such in the State of Texas, in substantially the form as **Exhibit H**. Payment bonds shall cover the Operator's obligations during the guarantee and/or warranty periods as well as the construction period. The payment bond shall be returned to the Operator at such time as construction is deemed complete and accepted by the City.

END OF ARTICLE

## ARTICLE 3 PAYMENT FOR COST OF FACILITY

### Section 3.1 PROJECT FINANCING.

The City will have the right in its sole discretion to determine the financing structure for the issuance of Bonds secured primarily with CFC proceeds to finance Project Costs. The City will periodically coordinate Bond Documents with the Operators.

From time to time during the Term hereof, the City may refinance Project Costs by issuing Bonds to refund any then outstanding Bonds, if the City deems such refinancing prudent.

### Section 3.2 OPERATOR COOPERATION.

The Operator will cooperate with the City throughout the Lease Term to secure funding for the Project through the issuance of Bonds or any other financial transactions. Specifically, the Operator will provide the City with all requested data related to Transactions and Transaction Days, including, but not limited to, monthly rental car Transactions and monthly rental car Transaction Days, and all other reasonable information requested from time to time by the City to support the City's financing efforts as well as to support the City's periodic discussions with rating agencies and to comply with the City's continuing disclosure obligations related to the Bonds.

### Section 3.3 APPLICATION OF CFC REVENUES AND FUND STRUCTURE.

The City will apply CFC revenues, to the extent available, in accordance with the following general priorities, such priorities subject to the specific provisions and requirements of the Bond Documents:

1. First. To the Debt Service Fund to pay debt service as required by the Bond Documents related to all Bonds issued by the City to finance or refinance Project Costs ("**Debt Service Fund**");
2. Second. To the Debt Service Reserve Fund to fund a Bond debt service reserve funds as required by the Bond Documents ("**Debt Service Reserve Fund**");
3. Third. To the Debt Service Coverage Fund to fund the rolling coverage fund as required by the Bond Documents ("**Debt Service Coverage Fund**");
4. Fourth. To the Public Parking Area GARB Debt Fund in approximately equal monthly installments of the total amount of principal and interest on the City's outstanding Public Parking Area Debt coming due during the applicable Bond Year ("**Public Parking Area GARB Debt Fund**");
5. Fifth. To the Subordinated Debt Fund to pay debt service on subordinated debt, if any ("**Subordinated Debt Fund**");
6. Sixth. To the Administrative Costs Fund to pay any arbitrage rebate requirements related to the Bonds, Costs of CFC Administration, and Facility property insurance ("**Administrative Costs Fund**");

7. Seventh. To the CFC Renewal and Replacement Fund to fund a renewal and replacement reserve fund in an amount not to exceed seven million five hundred thousand dollars (\$7,500,000.00), to pay the costs of unforeseeable expenditures and provide for the renewal and replacement of Facility elements (“**CFC Renewal and Replacement Fund**”) as more fully described in the Bond Documents;
8. Eighth. To the CFC Surplus Fund (“**CFC Surplus Fund**”) in the following order of priority to be available to: (i) fund any required deposits to the first seven (7) funds identified above in the event CFC revenues are not sufficient to make such required deposits in full; (ii) fund Initial Tenant Improvement Reimbursements; (iii) fund the Contingent Fee Reimbursement Account to reimburse Contingent Fees to Operators and the City; (iv) deposit the remaining funds in the Routine Maintenance Reimbursement Account, and monthly, as deposited, transferred to the CONRAC Manager, to reimburse CFC Eligible Routine Maintenance; however, the balance of the CFC Surplus Fund must under no circumstances fall below \$2,000,000.00; and (v) for any other lawful CONRAC purpose. Additionally, the Airport Parking Operating Funds Account will be initially funded in the amount of \$8,500,000 from CFC collections on deposit at the time of Bond closing to pay the City for Airport Parking Operating Costs.

*[remainder of page intentionally blank]*

The following table shows the fund structure in the Bond Documents, deposit priorities, and purpose of funds:

Proposed CONRAC Funds Flow CONRAC Program San Antonio International Airport			
Priority	Customer Facility Charge Revenue Fund	Fund/Account Purpose	Amount Included in CFC Calculation
1	Debt Service Fund	Pay Debt Service As Required	Annual Debt Service
2	Debt Service Reserve Fund	Debt Service Reserve	Reserve Requirement Replenishment
3	Debt Service Coverage Fund	Cover Debt Service deficiencies for Debt Service Fund and Public Parking Area GARB Debt Fund and count as coverage	Any Deficit
4	Public Parking Area GARB Debt Fund	Pay Debt Service As Required and replenish pro rata GARB debt service reserve fund deficiency	Annual Debt Service
5	Subordinated Debt Fund	Pay Subordinated Debt Service As Required	Subordinated Debt Service
6	Administrative Costs Fund	Pay Costs of CFC Administration, Facility Property Insurance	Administrative Costs
7	CFC Renewal and Replacement Fund	Pay Major Maintenance, Budgeted Renewals and Replacements, and establish a \$7.5 Million reserve for Unforeseeable Requirements	Major Maintenance, Budgeted Renewals, Replacements, and Reserve Replenishment
8	CFC Surplus Fund	Remaining Funds Depository	
a.	Fund Deficiencies in 1-7 Above	Bond Documents Compliance	No
b.	Initial Tenant Improvement Reimbursement Account	Initial Tenant Improvement Reimbursement	No
c.	Contingent Fees Reimbursement Account	Reimburse Contingent Fees	May be included in CFC calculation
d.	Routine Maintenance Reimbursement Account	Reimburse CFC Eligible Routine Maintenance Costs up to an amount that does not allow the Other CFC Lawful Purposes Balance to go below \$2 million	No
e.	Excess CFC Revenues	Other CFC Lawful Purposes	No
f.	Airport Parking Operating Funds Account Lost Parking Revenue and Shuttle Bus Expense Reimbursement Account	Initially funded from Prior CFC Revenues to reimburse lost parking revenue and the expenses associated with passenger shuttling	No

### **Section 3.4 CONTINGENT FEE.**

The purpose of the Contingent Fee is to remain in compliance with the Bond Documents. A Contingent Fee will be imposed from time to time only if there are not enough funds in the CFC projections to cover the requirements under the Bond Documents and the City has considered the following options and deemed them not to be fiscally responsible: (i) increasing the CFC rate; (ii) utilizing funds available in the CFC Renewal and Replacement Fund; and/or (iii) utilizing funds available in the CFC Surplus Fund.

Once a Contingent Fee is imposed, the Aviation Director shall promptly engage an airport consultant to review the Transaction Day and CFC collection history, and who shall prepare and deliver to the City, the Trustee and the Operators a new CFC Report recommending appropriate action with respect to the CFC rate and other appropriate actions, which CFC Report recommendation(s) shall be implemented as promptly as practicable.

#### **3.4.1 Contingent Fee Prorations and Payment.**

The City shall prorate the Contingent Fee between the Operators and the City. The proration will be based on the construction cost of the Public Parking Area compared to the cost of the Facility as determined by the construction contractor as reflected on **Exhibit G**. The City shall pay the portion of Contingent Fee relating to the Public Parking Area and the Operators shall pay the remainder of the Contingent Fee requirement. City covenants and agrees that the Operators shall not be subject to any liability through the Contingent Fee for the Public Parking Area; Operator covenants and agrees that City shall not be subject to any liability through the Contingent Fee for the CONRAC.

#### **3.4.2 Contingent Fee Estimate.**

The City shall include in its CFC Report and any supplemental reports, and as otherwise required herein, and will provide Operator with a statement of the estimated monthly installments of Contingent Fee (the “**Contingent Fee Estimate**”), if any, that will be due and payable by Operator by the fifteenth (15<sup>th</sup>) day of each month during each such Lease Year. The Contingent Fee Estimate shall be sufficient to enable the City to fully fund each of the first seven (7) funds identified in **Section 3.3** above for such Lease Year and to comply with the Rate Covenant set forth in **Section 2.05** of the Indenture of Trust. The City shall base such Contingent Fee Estimates on, among other things: (i) the estimated or forecasted number of Transaction Days for such Lease Year; (ii) the estimated or forecasted CFC collections for such Lease Year; (iii) the amounts projected to be on deposit and available in the CFC Surplus Fund during such Lease Year; (iv) the estimated or forecasted amount necessary to fully fund each of the first seven (7) funds identified in Section 3.3 above for such Lease Year. Operator shall pay to the Trustee the estimated monthly installment of Contingent Fee as set forth in the Contingent Fee Estimate.

#### **3.4.3 Contingent Fee Statement.**

The CFC Report shall include a statement (the “**Contingent Fee Statement**”) setting forth (i) the amount that was necessary to fully fund each of the first seven (7) funds identified in **Section 3.3** during such Lease Year; (ii) the total CFC collections received by the Bond Trustee during such Lease Year; (iii) the total amount of Contingent Fee paid by the Operator, all other Operators, and the City during prior Lease Years, and (iv) the available balance, as of the last day of the just ended Lease Year, of the CFC Revenue Fund and the CFC Surplus Fund.

#### **3.4.4 Contingent Fee Payments to Trustee.**

To the extent Contingent Fee is required to fund one or more of the first seven (7) funds identified in



**Section 3.3** above, the Operator will pay to the Trustee its Pro Rata Share of the Contingent Fee, as set forth in **Section 6.3** below. Any and all Contingent Fees shall be paid by Operator and the City as and when provided hereunder, and in all events without set-off, deduction, credit, or discount.

#### **3.4.5 CFC Court Challenge.**

If all or any part of the CFC fails to survive a challenge in a court of competent jurisdiction, then the stricken portion(s) of the CFC will be replaced, as appropriate, with a Contingent Fee in an amount determined by the City in its sole discretion that is at least equal to the amount that would otherwise be provided by the CFC and sufficient to meet the applicable covenants under the Bond Documents. In the event all or any part of the CFC fails to survive a challenge in a court of competent jurisdiction, all references to the CFC in this Lease Agreement shall be interpreted to mean both the CFC and the Contingent Fee, or the Contingent Fee, as applicable.

#### **Section 3.5 REIMBURSEMENT OF CONTINGENT FEES.**

In the event Operator, all the other Operators, and the City contribute Contingent Fees during the Term of this Lease Agreement, such amount is eligible for reimbursement through CFC collections provided all the following conditions are met: (i) such reimbursement is allowed by Applicable Law; (ii) Operator is currently operating at the CONRAC and is not in default under the Lease Agreement or Concession Agreement; and (iii) all financing requirements of the Bond Documents that are superior in priority to the financing requirements for reimbursement of Contingent Fees are met. In the event all the aforementioned conditions are met, and funds are available in the Contingent Fee Reimbursement Account as determined in the CFC Report, the City and the Operator will be reimbursed, to the extent CFCs are available, for the amount of City's and Operator's prior contributed Contingent Fee. Such reimbursement will be proportionally given to the City and all Operators within the CONRAC who contributed Contingent Fee based on the City's and each individual Operator's proportion of the total Contingent Fee contributed by the City and all Operators. Such reimbursement will occur until Operator, other Operators, and the City are reimbursed the amount of its entire Contingent Fee contributed with no interest.

#### **Section 3.6 QUARTERLY CONSULTATIONS.**

The City will schedule a teleconference once each calendar quarter with the Operators to review such items as:

1. CFC data;
2. Deplaning passenger trends;
3. Ratio of deplaning passengers to Transaction Days;
4. CFC year-to-date collections;
5. Adequacy of the CFC proceeds to satisfy the current year CONRAC funding requirements per the Bond Documents;
6. Whether to implement a Contingent Fee to satisfy that year's CONRAC funding requirements;
7. Forecast of CFC proceeds for the remaining months of the current Lease Year and the

succeeding Lease Year;

8. The Facility Maintenance Fee amount, and
9. Use of other lawful CONRAC purposes funds in **Section 3.3** above.

**Section 3.7 SUBORDINATION TO BOND DOCUMENTS.**

This Lease Agreement and all rights of Operator hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made (at any time) by City to secure Bond financing. This Lease Agreement is subject and subordinate to the terms, covenants, and conditions of the Bond Documents authorizing the issuance of Bonds by the City to finance the development of the Facility or to refinance the Facility. City may amend or modify the Bond Documents or make any change thereto that does not materially adversely affect the Operators' rights and obligations under this Lease Agreement. Conflicts between this Lease Agreement and the Bond Documents shall be resolved in favor of the Bond Documents.

All definitional terms that are not specifically defined herein are to have the meanings set forth in the Bond Document.

END OF ARTICLE

## ARTICLE 4 LEASE OF PREMISES

### Section 4.1 GRANT OF LEASED PREMISES.

Subject to all of the terms, covenants and conditions contained in this Lease Agreement, as of the Commencement Date, the City hereby grants to Operator, and Operator hereby accepts from the City the following Leased Premises with respect to the CONRAC:

#### 4.1.1 Exclusive Use Premises.

The City hereby grants to Operator the Exclusive Use Premises identified on **Exhibit D** attached hereto and by this reference made a part hereof, for the Term of this Lease Agreement. The Exclusive Use Premises shall initially be allocated, and are subject to reallocation, as set forth in **Article 11** of this Lease Agreement.

#### 4.1.2 Common Use Area.

The City also hereby grants to Operator a non-exclusive right to use the Common Use Area as shown in the attached **Exhibit D** for the Term of this Lease Agreement. Notwithstanding the foregoing, certain of the Common Use Area, including QTA Equipment may be allocated to an Operator on a preferential basis during the Term of this Lease Agreement, subject to subsequent re-allocation as set forth herein.

As possession of the Leased Premises is delivered to Operator, as evidenced by written notice to Operator, which notice shall indicate the date upon which the Leased Premises are to be delivered to Operator, Operator shall promptly examine the Leased Premises. Unless Operator provides the City with written notice of: (i) any patent defect or problem in Operator's Leased Premises within ten (10) days of the date upon which possession of the Leased Premises is delivered to Operator, and (ii) any latent defect or problem in the Leased Premises within one hundred eighty (180) days of the date upon which possession of the Leased Premises is delivered to Operator, Operator shall have accepted the Leased Premises in their then-present condition, subject only to the applicable warranties provided by the City's contractor(s) and materials supplier(s). In the event that Operator provides the City with written notice of any defect as set forth above, the City shall promptly remedy any defect at its expense; provided, however, such expense shall be considered a Project Cost.

### Section 4.2 AREAS RESERVED TO CITY.

The City reserves to itself those portions of the Facility identified on **Exhibit D** (the Public Parking Area).

Notwithstanding anything to the contrary in this **Section 4.2**, the City agrees that it will not grant to a Non-RAC Concessionaire the right to engage in any concession within the CONRAC that will involve Off Airport rental car operators or the advertising of Off-Airport rental car operator or enterprises that compete directly with the Rental Car Concession and/or the advertising/or sale of goods and/or services reasonably incidental thereto. By way of example, and not limitation, the lease of global positioning devices, ski racks, and car seats shall be considered services reasonably incidental to the renting of vehicles. Furthermore, the City will make good faith efforts to ensure such Non-RAC Concessionaire signage and operation does not obstruct the line of site to Operators' counters.

### Section 4.3 SUBSTANTIAL COMPLETION AND FINAL INSPECTIONS.

Operator and the CONRAC Manager, and Operators' Technical Representative may participate with

the City in the Substantial Completion and final inspections associated with the construction of the CONRAC.

**Section 4.4 ACCEPTANCE OF LEASED PREMISES.**

The Operator's acceptance and occupancy of the Leased Premises on the Substantial Completion date for purposes of completing the Initial Tenant Improvements shall mean that Operator has accepted the Leased Premises in their then-present condition "as is, where is and with all faults."

END OF ARTICLE

## ARTICLE 5 TERM

### Section 5.1 TERM.

This Lease Agreement shall be effective and binding between the parties as of the Effective Date conditioned upon Operator then being a party in Good Standing to a Concession Agreement in effect with City. The Lease Term (“**Lease Term**”) shall commence on the Commencement Date and unless earlier terminated pursuant to the provisions of this Lease Agreement, shall extend until the last day of the twentieth (20<sup>th</sup>) Lease Year. “**Initial Lease Period**” means the period of time between DBO and the first Lease Year. “**Lease Year**” means each successive year during the Lease Term, beginning with the first Bond Year. The City shall use its best efforts to advise the Operators whether the Facility shall continue to be operated as a CONRAC at expiration of the Lease Term. In the event the City elects to cease operation of the CONRAC, the City shall cause all outstanding Bonds to be legally defeased, and the use of CFCs to fund the Bonds and other obligations set out in this Lease Agreement shall also cease upon expiration or termination of the Lease Agreement.

### Section 5.2 RENEWALS.

So long as the Operator is in Good Standing, subject to applicable notice and cure provisions, under this Lease Agreement and the Concession Agreement, if the City agrees, in its sole discretion, to extend the term of the Concession Agreement or to enter into a successor Concession Agreement with Operator, the Lease Term shall automatically be extended for the same term as the subsequent Concession Agreement.

### Section 5.3 TERMINATION UPON EXPIRATION OR TERMINATION OF CONCESSION AGREEMENT.

At expiration of Operator’s Concession Agreement without renewal or continuation by consent of City, or replacement by a successor agreement with the City authorizing Operator to operate its Rental Car Concession at the Airport, and upon any other termination of the Concession Agreement, this Lease Agreement shall terminate on ten (10) days’ written notice to Operator.

END OF ARTICLE

## ARTICLE 6 GROUND RENT AND OTHER FINANCIAL OBLIGATIONS

### Section 6.1 GROUND RENT.

For and in consideration of the rights granted by this Lease Agreement, the Operator shall, commencing on the DBO through and including the Initial Lease Period, and thereafter for the Lease Term, pay to the City its pro rata share of the Ground Rent. Ground Rent is general airport funds.

#### 6.1.1 Ground Rent and Apportionment.

The initial Ground Rent rate is One and Zero/Hundred Dollars (\$1.00) per square foot. **Exhibit F** shows the Ground Rent apportionment between the Public Parking Area and CONRAC. Also, it shows the apportionment of Ground Rent between the Operators.

The total Ground Rent for the Facility (Public Parking Area and CONRAC) shall be calculated by multiplying the Ground Rent rate per square foot times the total number of square feet in the Lease Site:

$$\text{Ground Rent rate/sq ft X Lease Site total sq ft} = \text{Total Facility Ground Rent}$$

The Ground Rent will be allocated between the Public Parking Area and the CONRAC by dividing the total CONRAC square footage (of every kind) by the total Facility square footage to calculate the CONRAC percentage allocation of square footage. Then the CONRAC percentage allocation of square footage shall be multiplied by the total Facility Ground Rent to determine the amount of total CONRAC Ground Rent, as follows:

$$\begin{aligned} \text{Total CONRAC sq ft} \div \text{total Facility sq ft} &= \text{CONRAC \% allocation of sq ft} \\ \text{X total Facility Ground Rent} &= \text{total CONRAC Ground Rent} \end{aligned}$$

Each individual Operator's pro rata share of Ground Rent shall be calculated by dividing the square footage of Operator's Exclusive Use Premises in the Ready/Return Area by the total square footage of CONRAC Exclusive Use Premises in the Ready/Return:

$$\begin{aligned} \text{Operator's Exclusive Use Premises sq ft} \div \text{total CONRAC Exclusive Use} \\ \text{Premises sq ft} &= \text{Operator's pro rata share of Ground Rent} \end{aligned}$$

Finally, each Operator's Ground Rent shall be calculated by multiplying the Operator's pro rata Share of Ground Rent by the Total CONRAC Ground Rent:

$$\text{Operator pro rata share X Total CONRAC Ground Rent} = \text{Operator Ground Rent.}$$

#### 6.1.2 Periodic Ground Rent Adjustment.

The Ground Rent will increase fifteen percent (15%) at the end of each five (5) year period over the Term of the Lease Agreement. The increased Ground Rent will take effect at the beginning of the sixth (6<sup>th</sup>) Lease Year and every five (5) years thereafter.

### **6.1.3 Payment of CONRAC Ground Rent.**

Each Operator shall pay its pro rata share of CONRAC Ground Rent in equal monthly amounts to the City in advance on the first day of each and every month during the Lease Term, without any prior demand, and without any abatement, deduction or setoff whatsoever, at the Remittance Address in **Article 7**.

If the DBO falls on any day other than the first day of a calendar month, Ground Rent for the first fractional month prior to the commencement of the Initial Lease Period shall be equivalent to the monthly amount to be paid for the first Lease Year prorated based upon the actual number of days in such fractional month.

## **Section 6.2 CUSTOMER FACILITY CHARGES.**

### **6.2.1 Collection Requirement.**

Operator shall collect a daily CFC on all Transactions with Airport Customers. The CFC shall be increased to \$5.00 per Transaction Day as of July 1, 2015. CFCs are collected and remitted by Operators to pay the debt service and other Bond Document requirements as consideration for use of the CONRAC. The CFC shall be separately identified on the Airport Customer's rental contract, and shall be described as the "Customer Facility Charge" or "CFC." Each Operator must collect the CFC for each Transaction, and must remit the full amount of the CFC to the City regardless of whether the full amount of such CFC is actually collected by the Operator from the Airport Customer. In the event the City elects to cease operation of the CONRAC, the use of CFCs to fund the obligations set out in this Lease Agreement shall also cease upon expiration or termination of the Lease Agreement.

### **6.2.2 CFC Proceeds Held in Trust.**

Operator agrees that the CFC is not income, revenue or any other asset of Operator, that Operator has no ownership or property interest in such CFCs, and that Operator hereby waives any claim to an equitable or ownership interest in the CFCs. Operator agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or the Trustee) has complete possessory and ownership rights to such CFCs. Consistent with the nature of the CFC, as funds held in trust for the City, Operator shall separately account on its books and records for the CFC proceeds it collects. Notwithstanding the foregoing, in the event that either: (i) it is determined that the Operator must, as a matter of law, establish a separate account into which all CFC proceeds must be deposited, or (ii) it is determined, by a court of competent jurisdiction that the failure to maintain the CFC in a separate account imperils the trust nature of the relationship created by this **Section 6.2** and potentially subjects any CFC amounts held by Operator to the claim (or potential claim) by Operator's creditors, whether in bankruptcy or otherwise, then in that event, the City shall have the right to require Operator to establish a separate account into which all CFC proceeds collected shall be deposited, and all interest (if any) on the CFC proceeds held by Operator shall inure to the benefit of, and be payable to, the City.

Operator acknowledges the CFCs collected and held by the Operator are property in which the Operator only holds a possessory interest and not an equitable interest, and the Operator acknowledges that the CFCs collected by Operator are pledged as security for the Bonds. In order to secure payment of debt service on the Bonds, the Operator hereby consents to assignment by the City of the CFCs collected by the Operator to the Trustee.

### **6.2.3 Operator to Promptly Remit CFC Proceeds.**

Operator shall remit the CFC proceeds held by the Operator to the Trustee on a monthly basis on or

before the fifteenth (15<sup>th</sup>) day of each month following the month in which the CFCs were collected. The Operator shall remit the CFCs by check or by electronic funds transfer or other means specifically approved by the City in writing. When remitting such CFC proceeds to the Trustee, the Operator shall report and reconcile the CFC proceeds remitted on a form submitted to the City, and shall submit such additional information as may reasonably be necessary for the City to determine any matter related to the CFCs. A copy of the current report form required by the City is attached hereto as **Exhibit I**. Operator agrees that the City may revise the report form from time to time and that such revised form will be used once finalized. Further, the City reserves the right to make available an on-line electronic reporting system.

Operator agrees that City may release CFC data derived from the CFC remittance on a monthly basis to all Operators and to the CONRAC Manager, which information may be used by Operators and CONRAC Manager for purposes related to this Lease Agreement and the Concession Agreement.

#### **6.2.4 Records; Audits.**

Operator shall maintain records and controls which are sufficient to demonstrate the accuracy of the CFC proceeds collected by the Operator and the amount of CFC proceeds paid to the Trustee. Such records shall be maintained in accordance with, and subject to inspection and audit as set forth in **Article 8** of this Lease Agreement.

#### **6.2.5 Amount and Determination of the Customer Facility Charge.**

Subject to covenants made in connection with the issuance of any Bonds, including the Rate Covenant set forth in **Section 2.05** of the Indenture of Trust, the Aviation Director shall have the sole authority to determine adjustments to the amount of the CFC. The Parties acknowledge and agree that the City will set the CFC rate (when multiplied by the total projected annual number of Transaction Days) at a level sufficient to cover the payment obligations of the Bonds; the funding of all funds and accounts required by the Bond Documents; the Costs of the CFC Administration; an amount, as reasonably determined by the City, sufficient to fund the future projected costs associated with Major Maintenance and other costs of maintenance; and to reimburse City and Operators for outstanding Contingent Fees, based on the recommendation in the CFC Report. The City will consider reimbursement of Contingent Fees in the evaluation and analysis in setting the CFC rate with the intent to reimburse Operators for Contingent Fees paid in the Lease Year subsequent to the year in which such Contingent Fees were paid.

In setting the level of the CFC, the City will establish one or more reserve funds that it reasonably believes to be prudent to minimize significant year-over-year increases or decreases in the level of the CFC and/or meet future needs associated with the CONRAC (the CFC Renewal and Replacement Fund).

The Aviation Director shall regularly, and not less than annually, establish the level of the CFC and provide Operators not less than thirty (30) days advance written notice of any change in the anticipated CFC rate. Notwithstanding the foregoing, the Aviation Director shall have the right to make unscheduled adjustments to the level of the CFC in the event there has been a material change in any of the assumptions utilized in the City's calculation of the CFC.

#### **6.2.6 Review of CFC Report.**

At least 45 days prior to the end of each Bond Year, the City will finalize a budget for forecasted CFC



collections for purposes of paying the payment obligations on the Bonds, the other funding obligations required under the Bond Documents, and the Costs of CFC Administration. In addition, in the CFC Report, the City will provide an accounting of the amounts paid into and out of reserve funds established by the City, either as required by the Bond Documents or for payment of such items as Major Maintenance. The CFC Report will include the Contingent Fee Statement.

#### **6.2.7 Bond Documents Control.**

In the event of any conflict between this **Section 6.2** and the Bond Documents, the terms of the Bond Documents shall control.

#### **6.2.8 No Abatement or Offset.**

Under no circumstance, and notwithstanding any contrary language in this Lease Agreement, the Concession Agreement or otherwise, will Operator's obligation to collect and remit the CFC to the Trustee be subject to abatement, offset, or deduction. The Operator's obligation to collect and remit the CFCs to the Trustee shall be absolute and unconditional and shall continue in any event, including, without limitation, any damage or destruction subject to **Article 21** of this Lease Agreement or any termination of this Lease Agreement pursuant to **Article 24**, and in the event of such termination, the Operator continues to occupy, possess and use any portion of the CONRAC.

#### **6.2.9 No Diversion.**

Operator shall not, directly or indirectly, divert Airport Customers away from the CONRAC or assist any Airport Customer in avoiding payment of the CFC.

### **Section 6.3 REIMBURSABLE CITY COSTS.**

#### **6.3.1 Definition.**

It is the intention of the Parties to transfer day-to-day responsibility associated with the operations and maintenance of the CONRAC to the Operators. Nonetheless, there are certain costs and obligations associated with operation and maintenance the CONRAC that will, subject to a right of reimbursement to the City from the Operators, be undertaken by the City. The Operators shall reimburse the City those costs incurred by the City in connection with the operation, maintenance and repair of the CONRAC ("**Reimbursable City Costs**"), all as more specifically described in this **Section 6.3**.

Reimbursable City Costs specifically include the following: (i) the Utilities Costs for the Common Use Area, except to the extent billed to and paid by the CONRAC Manager; (ii) in the event that the City has assumed responsibility for the operation, maintenance and repair of the CONRAC as provided in **Section 15.7**, the actual cost of such operation, maintenance and repair (including a reasonable allocation of the City overhead), specifically including, but not limited to, the cost of a manager and associated support staff responsible for supervising the operation and management of the CONRAC (specifically including the Operators' compliance with the obligations imposed by the Lease Agreements); and (iii) any other cost or expense incurred by the City in connection with the Operators' operations on or occupation of the CONRAC.

#### **6.3.2 Payment.**

The City will invoice the Operators through the CONRAC Manager for Reimbursable City Costs as and when incurred, which invoice shall be due and payable at the Remittance Address no later than thirty (30) days from the date of the invoice. Each Operator shall be responsible for its Pro Rata Share of the Reimbursable City Cost.

END OF ARTICLE

## ARTICLE 7 REMITTANCE

### Section 7.1 REMITTANCE ADDRESS.

All non-electronic fund transfer payments required herein shall be tendered to:

City of San Antonio, Aviation Department  
Attn: Finance Division  
457 Sandau Road  
San Antonio, Texas 78216

(**“Remittance Address”**). The Remittance Address for payment may be changed at any time by the Aviation Director upon ten (10) days written notice to Operator and/or CONRAC Manager. Operator assumes all risk of lost payments if payments are made by mail.

### Section 7.2 LATE PAYMENT AND/OR LATE REPORTING FEES.

All rentals and payments unpaid for thirty (30) days after the date due shall bear interest at the rate of eighteen (18) percent per annum which interest shall accrue from the date due; however, in no event shall the interest rate charged exceed the maximum amount allowable by law. The fee for late reports required under this Lease Agreement shall be One Hundred Dollars (\$100.00) per month.

END OF ARTICLE

## **ARTICLE 8 ACCOUNTING PROCEDURES; AUDIT**

### **Section 8.1 ACCOUNTING PROCEDURES.**

Operator covenants and agrees that it will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type of operation permitted by this Lease Agreement) in full and complete accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the City for the determination of any and all sums owing by Operator under the Lease Agreement, including CFCs, Transactions, Transaction Days, and information necessary for verification of invoices and payments for any reimbursement requests, or other computations, or both, which may be necessary or essential in carrying out the terms of this Lease Agreement. Operator shall maintain its records relating to the operation permitted by this Lease Agreement for a period of at least three (3) years after the end of each Lease Year (or until the close of any ongoing audit thereof being conducted by, or on behalf of, the City); provided, however, that the City may (prior to the expiration of the relevant retention period) require that any such records be retained for a longer period of time, in which case Operator, at its option, may deliver such records into the custody of the City.

### **Section 8.2 AUDIT.**

#### **8.2.1 Inspection of Books and Records.**

The City shall be allowed to inspect and audit Operator's books of accounts and records with reference to the determination of any matters relevant to this Lease Agreement at all reasonable times, upon prior written notice to Operator. The City shall specifically be entitled to inspect and audit any records necessary to complete the audit in a manner consistent with generally accepted auditing principles. Operator agrees to provide appropriate workspace to conduct the audit and free access to copiers; fax machines and other needed office equipment. Operator shall provide contact information for Operator's accounting manager or the like who has a thorough knowledge of the accounting system as it pertains to this Lease Agreement and who will be available to the City during any such audit. The cost of such audit shall be borne by the City unless the results of such audit reveal a discrepancy of more than three percent (3%) for the CFC for any twelve (12) month audit period. In the event of such discrepancy, the full cost of the audit shall be borne by the Operator, and Operator shall promptly pay all additional fees owing to the City together with interest on such sums from the date originally due until the date paid.

#### **8.2.2 Books and Records Outside San Antonio Region.**

In the event that Operator's books and records are not maintained in the San Antonio region, they shall be made available for audit locally within twenty (20) business days of a written request by the City, or Operator shall pay in full any and all travel and related expenses incurred by the City to travel to the location outside the San Antonio region.

#### **8.2.3 Electronic Data.**

In those situations where Operator's records have been generated from computerized data (whether mainframe, minicomputer, or PC-based computer systems), Operator agrees to provide extracts of data files in a computer readable format on data disks, e-mail with attached files, or suitable alternative computer data exchange formats.

END OF ARTICLE

## ARTICLE 9 PERFORMANCE GUARANTEE

### Section 9.1 PERFORMANCE GUARANTEE.

Upon the DBO, the Operator shall deposit with City the sum equal to six (6) months' of estimated CFCs paid by the Operator to City and projected Ground Rent, to be held by City as security for Operator's full, faithful, and timely performance of its obligations under this Lease Agreement ("**Performance Guarantee**"). At least one-third of the Performance Guarantee shall be in the form of an irrevocable letter of credit. The remainder may be in the form of a surety bond, or other instrument satisfactory to the City. Notwithstanding the foregoing, Operator may provide an on-demand surety bond in the entire amount required for the Performance Guarantee.

The letter of credit, surety bond, or other instrument must be in a form, and drawn on a bank or financial institution, acceptable to the City, and must remain in effect throughout the term of this Lease Agreement whichever later terminates, and for a period of one hundred twenty (120) days thereafter. If a letter of credit, surety bond and/or instrument expires in accordance with its terms prior to such time, the Operator must provide a replacement letter of credit, surety bond and/or other instrument to City at least thirty (30) days before its expiration date.

#### 9.1.1 Performance Guarantee Periodic Increases.

As the fees and charges adjust during the term of this Lease Agreement, the City shall periodically review the adequacy of the Performance Guarantee, and may, by written notice to the Operator, increase the required amount of the Performance Guarantee. Such notice shall include a calculation of the revised Performance Guarantee, which shall not exceed six (6) months' total estimated CFCs, and Ground Rent due and payable by Operator under this Lease Agreement. The Operator shall, within twenty (20) business days of receipt of such written notice from City increasing the Performance Guarantee, deposit the additional amount with City by certified check, or supplemental letter of credit and/or surety bond or other instrument satisfactory to the City.

#### 9.1.2 Performance Guarantee Application and Replenishment.

City shall have the right, but not the obligation, to apply all or any part of the Performance Guarantee to cure any default of the Operator under this Lease Agreement, including, but not limited to, nonpayment of CFCs, Ground Rent, Contingent Fees, Reimbursable City Costs, property damage, and any other amounts due from the Operator under this Lease Agreement. In such event, the Operator must deposit with City an amount equal to the amount so applied by City within twenty (20) business days of written notice from City of the nature and amount of the application.

#### 9.1.3 Performance Guarantee Return.

The City shall return the Performance Guarantee to the Operator, less any amounts applied by the City under **Section 9.1.2** above, within one hundred twenty (120) days after the termination of this Lease Agreement, whichever later terminates.

END OF ARTICLE

## ARTICLE 10 USE

### Section 10.1 USE OF LEASED PREMISES.

#### 10.1.1 Generally.

Subject to Operator being awarded a Concession Agreement and otherwise subject to and in accordance with all present and future Legal Requirements and City Standards, Operator covenants and agrees that it shall use the Leased Premises solely for the purpose of operating a Rental Car Concession and for no other purpose or use. Operator shall not, under any circumstances, use the Leased Premises for performing vehicle maintenance or repair, excepting only car washing, cleaning, refueling, and Light Vehicle Maintenance. “**Light Vehicle Maintenance**” means the changing and rotation of tires, changing of belts, wiper blades, hoses and lamps, the changing of motor oil, oil filters and air filters, the flushing/changing of antifreeze/coolant or transmission fluid, changing/replacing windshields, replacing vehicle batteries, brake repair and maintenance (pads/rotors), and other minor repairs or replacements similar in nature and as approved by the Aviation Director. Any such activities must be conducted within QTA Space leased to Operator or such other area approved in writing by the Aviation Director, and, as to all such locations, in strict conformance with all of the requirements of this Lease Agreement. Operator also shall not, under any circumstance, use the Leased Premises for the retail sale of any vehicles, the storage of damaged vehicles, or any heavy vehicle maintenance or repairs. In addition, Operator may only provide rental car services and not provide ancillary business services in the CONRAC.

#### 10.1.2 Allowable Brands.

No more than thirteen (13) Brands shall be allowed to operate from the CONRAC at any given time during the Term of this Lease Agreement and the Concession Agreement. As of DBO, the Brands listed in the table below are authorized to operate from the CONRAC pursuant to the Concession Agreement during the Lease Term unless a change is allowed under **Section 11.5.1 – Vacated Space**, under **Article 27.2 – Assignment**, or at the end of a Term under the Concession Agreement:

OPERATOR/FAMILY	BRAND
Avis Budget Car Rental, LLC	Avis Rent A Car System, LLC
	Payless Rent A Car
The Hertz Corporation	Hertz
	Dollar Rent A Car
	Thrifty Car Rental
EAN Holdings, LLC	Enterprise Rent-A-Car
	Alamo Rent A Car
	National Car Rental
Satrac Inc dba Budget Rent A Car	Budget Car & Truck Rental
Advantage OPCO, LLC	Advantage Rent A Car
E-Z Rent A Car, Inc.	E-Z Rent-A-Car
Fox Rent A Car	Fox
Sixt Rent A Car, LLC	Sixt

With the Aviation Director's consent, this table may be modified from time to time as Brands are removed or added. An Operator shall be allowed to change to a new Brand. The Operator's previous Brand may continue to operate at the CONRAC regardless of whether divested from a Family, merged into a different Family, or as an independent Operator, so long as the Operator of such Brand is party to a Lease Agreement, Concession Agreement, and Operators Member Agreement, and the total number of Brands does not exceed thirteen (13). Operator shall be prohibited from operating at the Airports under any brand name or trade name other than the Brand name(s) or trade name(s) identified above and associated Car-Sharing programs. During the Term, Operator shall operate and maintain all signage only under the Brand or trade name(s) set forth above. No other brand or trade name shall be used or displayed by Operator at the Airports during the Term. Except as provided herein, the operation of multiple brand or trade names by Operator under this Lease Agreement is prohibited.

In the event an Operator operating multiple Brands divests a Brand, and that divested Brand desires to continue to operate in the CONRAC, the divested Brand shall be allocated space at the time of the divestiture within the divesting Operator's space. Any accommodations made between the divesting Operator and the divested Brand shall have no impact on any other Operator's space allocation nor shall any other Operator bear any expenses associated with such accommodations.

#### **10.1.3 Public Parking Prohibition.**

The Operators, through the CONRAC Manager, shall specifically police the CONRAC areas to ensure that the area is used solely for rental car concession operations and not for public parking.

#### **10.1.4 Employee Parking.**

Operator's employees may park at the Airport employees' parking lot at the then current fees and ride the bus, if available, to the Terminal area.

#### **10.1.5 Vendor Parking.**

Operator shall use those portions of the CONRAC (within the Common Use Area) identified for vendor parking solely for vendor parking in connection with the operation of a Rental Car Concession at the Airport. The Operators, through the CONRAC Manager, shall specifically police the vendor parking areas to ensure that the area is used solely for such purposes. The CONRAC Manager shall determine the method and manner by which access to the vendor parking area is granted and by which the vendor parking area is apportioned among the Operators.

### **Section 10.2 GENERAL STANDARDS GOVERNING USE.**

Operator shall not use or occupy or permit the Leased Premises or any part thereof, nor do or permit anything to be done in or on the Leased Premises, in whole or in part, in a manner which would in any way (i) violate any then applicable Legal Requirements; (ii) violate any of the covenants, agreements, provisions and conditions of this Lease Agreement; (iii) violate the Certificate of Occupancy then in force with respect thereto; (iv) hinder either the City or Operator from obtaining fire or other insurance required hereunder; or (v) constitute a public or private nuisance. Operator specifically agrees to comply with all present or future rules and regulations of the City.

Operator shall not use or occupy or permit the Leased Premises to be used or occupied, in whole or in part, in a manner which, in the Aviation Director's reasonable judgment, may or tends to, impair or interfere with (i) the character, reputation or appearance of the CONRAC, the Leased Premises or the City; or (ii) the use of any other City property.

Operator shall not do or permit or suffer any waste, damages, disfigurement or injury to or upon the Leased Premises or any part thereof.

**Section 10.3 SIGNS.**

Operator's Rental Car Concession shall be clearly signed and designated at all times during the Term of this Lease Agreement with the Operator's identification and sufficient operational signage to ensure the safe and efficient operation of the Rental Car Concession. Such signage shall be the sole cost of Operator. Except as specifically permitted by **Exhibit B**, Tenant Design Manual, Operator shall not attach to or paint on or within the Leased Premises (including the walls, windows and doors thereof) any signs, banners, or other advertising matter, symbols, canopies or awnings. At the termination of this Lease Agreement, all signs, banners, advertising matter, symbols, canopies or awnings attached to or painted by Operator shall be removed by Operator at its expense, and Operator shall repair any damage or injury to the Leased Premises and correct any unsightly condition caused by the maintenance and removal of said signs. Operator shall not be permitted to advertise any products and/or services other than those of Operator connected to the operation of the Rental Car Concession; provided, however, with the prior written consent of the Aviation Director, Operator may display logos and features from third party product providers that Operator offers under a rental contract as part of its Rental Car Concession (e.g., Sirius Radio, etc.), subject to the prior approval of the Aviation Director. Notwithstanding the foregoing, customer wayfinding signage is not the responsibility of the individual Operator. After DBO, customer wayfinding signage is a CFC Eligible Routine Maintenance expense.

**Section 10.4 CONCESSION AGREEMENT.**

Notwithstanding anything to the contrary in this Lease Agreement, the Operator acknowledges it shall retain the right to occupy the Leased Premises for the Term of this Lease Agreement only if the Operator is awarded and maintains a valid Concession Agreement for the operation of a Rental Car Concession.

END OF ARTICLE



## ARTICLE 11 INITIAL ALLOCATION AND REALLOCATION

### Section 11.1 INITIAL ALLOCATION.

**Exhibit E**, attached hereto and by this reference made a part hereof, shows the space to be allocated among the Operators within the CONRAC on the Effective Date (“**Initial Allocation**”). This allocation is based on Market Share by Operator or Family of rental car Brands. Each Operator, regardless of Market Share, shall be entitled to a minimum allocation of one percent (1%) of the total square footage of Ready/Return Area.

### Section 11.2 SUBSEQUENT REALLOCATION.

The methodology for reallocation of Operator’s Ready/Return Areas shall be based upon Market Share and subject to the provisions of this subsection. Suggested reallocation layouts will be identified and presented to the Aviation Director for approval. Such submission should indicate whether the Operators unanimously agreed with the allocation. The Aviation Director reserves the right, in the Aviation Director’s sole discretion, to adjust any reallocations to achieve the best overall operational efficiency and enhancement to the level of customer service within the CONRAC. Reallocation of the areas shall take place as follows:

1. Covered Ready/Return Areas and Overflow Parking Areas shall be subject to annual reallocation among the Operators, if triggered pursuant to this Section 11.2, based upon each Operator’s Market Share at the end of each Lease Year. Any reallocations resulting from Market Share changes in Lease Years 1 through 3 shall be effectuated only on the Overflow Parking Area as set out herein. Beginning with the Market Share changes in Lease Year 4, reallocations may be made in the Covered Ready/Return Areas and the Overflow Parking Area in accordance with this Section 11.2.
2. Minimum Allocations – New Entrants: Any New Entrant shall maintain their original space allocation in the Ready/Return Area unless a reallocation is triggered due to an increase in New Entrant’s Market Share as set out below.
3. Reallocation shall be triggered at the end of Lease Years 1 through 3 if any Operator demonstrates at the end of any such Lease Year at least a one percent (1%) increase in Market Share as compared to said Operator’s initial Market Share at DBO (i.e., if at DBO an Operator has five percent (5%) of Market Share, then that Operator’s share must increase by one percent (1%), totaling six percent (6%) of Market Share to trigger an annual reallocation). Notwithstanding the foregoing, to be eligible for additional Ready/Return Area space, any New Entrant must achieve a Market Share of four percent (4%), or one percent (1%) Market Share over the lowest non-New Entrant Market Share Operator on that floor, whichever percentage is lower. If triggered, at the end of each of the first two (2) Lease Years, any increases and/or decreases in Ready/Return Area spaces shall be reallocated from space in the Overflow Parking Area after under-allocated Operators are made whole (as per Subsection 6 below).

4. Beginning with Lease Year 4, and annually thereafter, re-allocation due to any increases and/or decreases in Market Share may be taken on that Operator's Covered Ready/Return Area floor if space is available. This reallocation shall be triggered if an Operator demonstrates at the end of any Lease Year, beginning with Lease Year 4, a two percent (2%) increase in Market Share (i.e., if at DBO an Operator has five percent (5%) Market Share, then that Operator's Market Share must increase by two percent (2%), totaling seven percent (7%) Market Share to trigger this re-allocation). Notwithstanding the foregoing, any New Entrant must achieve Market Share of four percent (4%), or two percent (2%) Market Share over the lowest non-New Entrant Market Share Operator on that floor, whichever percentage is lower.
5. In the event an increase is warranted and space is not available on the Operator's Covered Ready/Return Area floor, space shall be allocated in the Overflow Parking Area to make that Operator whole to its full Market Share square footage.
6. Overflow Parking Areas will be allocated in increments of full rows and in the following manner: (i) first, to any Operator whose Market Share total of Ready/Return Area square footage on the Ready/Return Area floor is unavailable on said Operator's Covered Ready/Return floor; (ii) second, to each New Entrant in a minimum of one (1) row each; (iii), third, after those under-allocated Operators are made whole to their full Market Share square footage and the New Entrants are allocated one row each, the remaining Overflow Parking Area square footage will be allocated to all Operators, including those who received Overflow Parking Area space to make them whole to their Market Share. However, any Operator who is allocated more than its Market Share equivalent of Ready/Return Area square footage on its Covered Ready/Return Area floor shall have its allocation of Overflow Parking Area reduced by the percentage of Ready/Return Area allocation that exceeds its Market Share. Each New Entrants will maintain its minimum allocation until it merits Market Share reallocation.
7. An Operator which is entitled to additional square footage per the reallocation process shall have the right to decline such reallocation, provided that such failure to accept the reallocated square footage does not negatively impact any other Operators which are also entitled to reallocated square footage during the same Lease Year.

### **Section 11.3 SUBSEQUENT RELOCATION OF FLOOR.**

1. No relocation of an Operator's initial Covered Ready/Return Area floor shall occur unless the Market Share of the Operators, excluding New Entrants, of any one Covered Ready/Return Area floor falls by at least twenty percent (20%) of its previous Lease Year's Market Share. In the event such a decrease in Market Share occurs, then any Operator on another Ready/Return Area floor which has gained twenty percent (20%) Market Share over its prior Lease Year's Market Share, shall have the right, but not the obligation, to request a relocation of said Operator's entire Ready/Return Area parking to the Covered Ready/Return Area floor on which the Operator incurring a twenty percent (20%) decrease in Market Share is located. The

Operator initiating such floor relocation is the “**Initiating Operator.**” In no event shall any Operator be allocated Covered Ready/Return Area space on more than one Covered Ready/Return Area floor.

2. The Operators affected by any change of Ready/Return Area floors may work with each other to develop an alternate plan for Ready/Return Area floor changes which, to the greatest extent possible, shall achieve the same effect as changing floors. In the event the affected Operators cannot agree on an acceptable alternate plan, they shall request the Aviation Director, using the priorities and the criteria listed in the foregoing paragraphs, to relocate Operator(s) from one floor to another floor with the least amount of operational disruption.
3. All costs incurred for any relocation of Ready/Return Area floors shall be borne entirely by the Initiating Operator, inclusive of all costs incurred to reallocate or relocate any Operator(s) currently operating on a floor impacted by such relocation.

#### **Section 11.4 QUICK TURN AROUND FACILITIES (QTAs)**

Reallocation of Ready/Return Area spaces does not trigger reallocation of QTAs, unless relocation of floors is triggered as set forth in **Section 11.3** above. Operator’s assigned QTA area shall be on the same floor as their Covered Ready/Return Area.

#### **Section 11.5 COUNTERS AND BACK OFFICES**

Except for vacancy as specifically set forth in this Agreement, the counters and back office spaces are not subject to reallocation during the Term.

#### **Section 11.6 REALLOCATION PROCESS.**

Operator agrees to coordinate relocation and relocate to its newly designated assigned areas with other Operators involved in the relocation within the timeframe set forth in the Final Notice issued under this Section 11.6. Not later than sixty (60) days prior to a reallocation, Operators will submit through the CONRAC Manager a “Notice of Intent” letter indicating the Operators’ proposed reallocation. If the Operators do not timely provide the Notice of Intent regarding reallocation, the City will either keep the current reallocation of space or will issue its own reallocation notice. If timely received, the City will consider the Operators’ proposed reallocation, and will issue a “Final Notice” of reallocation. An Operator losing space shall vacate the space being reallocated within thirty (30) days of receipt of the Final Notice. The Aviation Director shall have the final and sole discretion as to allocation and may reallocate all or a portion of any Operator’s Leased Premises. The Operators may request consideration by the City of reallocation times not identified specifically.

#### **Section 11.7 COSTS OF REALLOCATION/RELOCATION**

Except for floor relocation under **Section 11.3** above, each Operator will be responsible for its own costs incurred as a result of any reallocation. In the event of shared improvements among Operators, the costs of those shared improvements shall be equally allocated among those Operators sharing such improvements.

**Section 11.8 EARLY TERMINATION OF RENTAL CAR CONCESSION.**

In the event that the Lease Agreement and Concession Agreement for a particular Operator are terminated, the City has the right and shall reallocate the vacated Exclusive Use Premises as follows:

**11.8.1 Vacated Space.**

The City shall determine whether there are any New Entrants potentially interested in the vacated space or any smaller space within the CONRAC. The City shall then determine which Operators would be interested in some or all of the vacated space. Depending on the degree of interest by potential New Entrants and current Operators, the City, in its sole discretion, will determine how best to reallocate the vacated space considering the current Operators, their locations and Market Shares, any potential New Entrants and their likely Market Shares, and the efficiency and effective operation of the CONRAC. The City will base its determination on the following criteria: (i) enhancement of Airport rental car revenue; (ii) improving operational efficiency of the CONRAC; (iii) incumbent Operator demand; and (iv) demand from new market entrants.

City, at its discretion, will make vacated space available to New Entrants in accordance with appropriate public processes. New Entrants shall operate under the same terms and conditions as the then-current Lease Agreement, Concession Agreement, and Operators Member Agreement.

**11.8.2 Reallocation Costs.**

The costs associated with reallocation following termination of a particular Operator's Lease Agreement shall be borne by the relocating Operator or New Entrant.

END OF ARTICLE

## ARTICLE 12 ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

### Section 12.1 ALTERATIONS.

After completion of the Initial Tenant Improvements pursuant to **Section 2.2**, Operator shall not make any changes, alterations, additions, substitutions or improvements (collectively referred to as “**Alterations**”) to or upon the Leased Premises without first obtaining the Aviation Director’s prior written approval of such Alteration and subject to any and all conditions in such approval which approval shall not be unreasonably withheld. Operator shall otherwise comply with the design, construction and opening processes attached hereto as **Exhibit B**, attached hereto and by this reference, in connection with Operator’s design and construction of any such Alteration. Any Alteration shall be performed (i) in a good and workmanlike manner; (ii) in compliance with all Legal Requirements and the City Standards; and (iii) in a manner that will not unreasonably interfere with or disturb City, its tenants, or other users of the CONRAC and Airport.

### Section 12.2 CITY REVIEW DOES NOT RELIEVE OPERATOR.

Operator agrees that nothing in the City’s review or approval of Operator’s Alterations shall create responsibility or liability on the part of the City for their completeness, design sufficiency, or compliance with all Legal Requirements or the City Standards, all of which shall be Operator’s sole responsibility. Nor shall such review or approval constitute a waiver by the City of the right to thereafter require Operator to correct any failure by Operator to comply with any Legal Requirements or the City Standards later discovered by the City.

### Section 12.3 “AS-BUILT” DOCUMENTS.

Operator shall deliver to the City, ninety (90) days after project completion, complete “as built” drawings of any Alterations in electronic format and three (3) half-size hard copies, in a commercially reasonable format as determined by and acceptable to the City. For any equipment installed, Operator shall deliver to the City, two (2) copies of the complete operations and maintenance manuals and all warranties.

### Section 12.4 TRADE FIXTURES.

Except to the extent repairs or substitutions have been made or provided by the City, Operator shall retain ownership of: (i) all trade fixtures and business equipment and furnishings from time to time installed by Operator at its expense (including Operator’s rental booths); and (ii) all Alterations and/or improvements that Operator is required to remove at the end of this Lease Agreement pursuant to **Section ----**. Operator may remove any of such fixtures, equipment or furnishings at any time during the Lease Term and shall remove all from the Leased Premises prior to the expiration of the Lease Term, provided incoming operator does not want to purchase the improvements from existing Operator. Operator cannot remove any trade fixtures affixed to the Leased Premises without the written consent of the Aviation Director, which consent shall not be unreasonably withheld. Any such property not removed at the expiration of the Lease Term shall, at the election of the City, become the property of the City without payment to Operator, or shall be deemed abandoned and removed or disposed of by the City at Operator’s expense. Upon Operator’s removal of such property, Operator shall promptly repair any and all damage to the Leased Premises caused thereby and shall reimburse

the City for costs and expenses incurred by the City in removing any such property not removed by Operator and repairing any such damage not repaired by Operator. This covenant shall survive the termination of this Lease Agreement.

END OF ARTICLE

## **ARTICLE 13 REAL AND PERSONAL PROPERTY TAXES**

### **Section 13.1 TAXES.**

Subject to Operator's right to protest to the taxing authority or the amount, this Lease Agreement may result in a taxable possessory interest and be subject to the payment of property taxes. Operator shall be responsible for payment of, before delinquency, all taxes and assessments of any kind, including any possessory interest taxes, assessed or levied upon Operator or the Leased Premises by reason of this Lease Agreement or of any buildings, machines, vehicles, or other improvements of any nature whatsoever erected, installed, or maintained by Operator or the City by reason of the business or other activities of Operator upon or in connection with the Leased Premises.

### **Section 13.2 LICENSES AND PERMITS.**

The Operator shall be solely responsible for payment or any fees imposed by law for licenses or permits for any business or activities of the Operator upon the Leased Premises or under this Lease Agreement.

END OF ARTICLE

## ARTICLE 14 CONRAC MANAGEMENT CONTRACT

The Operators and each Operator shall, whether through a joint venture agreement, participation agreement, limited liability company agreement or any combination thereof through which all Operators are parties, enter into a CONRAC Management Contract with a financially responsible, experienced CONRAC Manager for the operation, maintenance and repair of the Exclusive Use Premises and Common Use Area (but specifically excluding the City-operated Public Parking Area of the Facility).

### Section 14.1 CITY CONSENT.

The identity of the CONRAC Manager, both the firm and the individual site manager, shall be subject to the written acceptance by City, which acceptance shall not be unreasonably withheld. In order to involve the CONRAC Manager in the commissioning of the CONRAC and pre-final and final inspections, the Operators shall retain and have available the CONRAC Manager no later than one hundred eighty (180) days before the DBO.

The Operators shall submit to the City a copy of the CONRAC Management Contract. The CONRAC Management Contract shall: (i) be consistent with the provisions of this Lease Agreement; (ii) be consistent with operating agreements customary in airport consolidated rental car facilities management industry and fuel facilities management industry; (iii) provide that the Common Use Area and Fuel Facilities be managed subject to and in accordance with the terms of this Lease Agreement; (iv) require the CONRAC Manager and Operators to defend and indemnify the City from any damages, claims or the like resulting from the CONRAC Manager's acts or omissions; (v) require the CONRAC Manager to procure insurance, as applicable, of like kind and amount required of the Operator as set forth in this Lease Agreement and to cause the City and the Operators to be named an additional insured under such policies; (vi) not be cancelled or terminated without prior written notice to the City; (vii) be assumed by the City at its option in the event of a default beyond any applicable notice and cure periods by the Operators or by CONRAC Manager thereunder; (viii) provide for the management and maintenance of Fuel Facilities and areas and systems and the allocation of such costs among Operators; (ix) require the CONRAC Manager to maintain a training program and conduct proper reporting, testing, and inspections of the Fuel Facilities; and (x) require the CONRAC Manager to abide by and follow City Codes and City Standards, including rules relating to the Airport, all applicable Environmental Laws, laws and regulations relating to safety and security and all requirements of this Lease Agreement, the Concession Agreement, Applicable Laws and any other Legal Requirements.

The contract between the Operators and the CONRAC Manager shall specifically bind the CONRAC Manager to those obligations to be performed by the CONRAC Manager or the Operator or Operators through the CONRAC Manager under this Lease Agreement, and the City shall specifically be a third-party beneficiary of any such terms. The CONRAC Manager shall have (i) significant experience in the management and operation of commercial fueling facilities similar in nature and scale to the Fuel Facilities in the Facility in a competent and professional manner in accordance with operating standards and policies standard in the industry and with a proven track record of successful, environmentally compliant operations; and (ii) the financial strength and management competency, with personnel having appropriate experience, to operate, maintain, manage and repair the Fuel Facilities. The CONRAC Management Contract shall require that the CONRAC Manager have a representative on-call at the CONRAC at all times, that is, twenty-four (24) hours per



day, seven (7) days per week.

#### **Section 14.2 CONRAC MANAGER CHANGE PROCEDURE.**

The Operators and each Operator shall, not less than one hundred twenty (120) days before the Commencement Date and ninety (90) days before any date on which Operators would intend to change the identity of, or terms of any contract with, the CONRAC Manager, submit to the Aviation Director for his review any such information as the City may reasonably request regarding the experience, financial strength and/or operational plan associated with any such CONRAC Manager and a complete copy (including all exhibits) of any proposed contract(s) between the Operators and the CONRAC Manager. The Operators should also notify the Aviation Director of any change of the assigned representative for the CONRAC Manager.

#### **Section 14.3 PERFORMANCE STANDARDS.**

The CONRAC Manager, on behalf of the Operators, shall be responsible for performing all CONRAC Major Maintenance and CONRAC Routine Maintenance: (i) in conformance with all Legal Requirements, the City Standards and the Operations Manual; (ii) using quality materials at least equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the City; (iii) using only qualified personnel; and (iv) in a good and workmanlike manner, adhering to the highest standards of quality.

#### **Section 14.4 ANNUAL CONRAC BUDGET.**

The CONRAC Manager will prepare and submit to City and Operators by April 1<sup>st</sup> of each year, an itemized budget detailing expected CONRAC Routine Maintenance Costs for the Initial Lease Period and first Lease Year and projected Major Maintenance for the first three (3) Lease Years of the Term. Both the proposed budget and the final Aviation Director approved budget for the period(s) contemplated herein shall include a statement of (i) the dollar amount to be requested as a disbursement from the CFC Renewal and Replacement Fund for projected CONRAC Major Maintenance in accordance with the Bond Documents; (ii) the dollar amount to be requested as disbursement from the Routine Maintenance Reimbursement Account for projected CFC Eligible Routine Maintenance in accordance with the Bond Documents; and (iii) the dollar amount projected for CFC Non-Eligible Routine Maintenance. The procedure for development, review and approval of the budget for the subsequent Lease Years, as well as for adjustment of a budget during a Lease Year, if necessary, shall be stated in the Operators Member Agreement.

Further, during the Initial Lease Period and during each Lease Year, as a part of the CONRAC budget review process, the City shall calculate the per Transaction Day Facility Maintenance Fee rate based on the CONRAC Manager's proposed budget as approved by the Aviation Director. The Facility Maintenance Fee, which fee is imposed by the City, shall be charged by the Operators to recover the costs of CFC Non-Eligible Routine Maintenance and the costs of CFC Eligible Routine Maintenance, if any, for which CFC funds are not available. The Operators shall collect and remit the Facility Maintenance Fee to the CONRAC Manager on a monthly basis pursuant to the Operators' Member Agreement. The Facility Maintenance Fee rate will be expressed as a per Transaction Day fee on each vehicle rental contract, which contract shall separately list and will be labeled "Facility Maintenance Fee." At mid-year during each Lease Year, the Aviation Director shall review the current CONRAC budget and projected expenses, and, if warranted, the Aviation Director may increase the Facility Maintenance Fee in order to meet budgeted requirements.

#### **Section 14.5 FAILURE TO PAY MANAGER.**

Operator shall, in a timely fashion, pay all amounts due from Operator under CONRAC Management Contract, and otherwise adhere to all covenants, conditions, or agreements to be observed or performed by Operator in the CONRAC Management Contract. Operator specifically agrees that any failure to pay such amounts or observe such covenants, conditions or agreements, resulting in a default under the Operators Member Agreement, shall be a default under this Lease Agreement.

END OF ARTICLE

## **ARTICLE 15 FACILITY OPERATION AND MAINTENANCE**

### **Section 15.1 MAJOR MAINTENANCE.**

There are two (2) categories of Major Maintenance: (i) Facility Major Maintenance and (ii) CONRAC Major Maintenance.

### **Section 15.2 FACILITY MAJOR MAINTENANCE.**

The City will perform Major Maintenance that pertains to the Facility and the Lease Site in its entirety (“**Facility Major Maintenance**”). The City will pay such costs directly from the CFC Renewal and Replacement Fund. When the City undertakes such work, it shall so notify Operator(s) and will proceed diligently to complete such work.

### **Section 15.3 CONRAC MAJOR MAINTENANCE.**

The Operator, together with other Operators, through the CONRAC Manager, will perform CONRAC Major Maintenance (“**CONRAC Major Maintenance**”). The CONRAC Major Maintenance to be performed by the Operator(s) must be approved in writing, in advance, by the Aviation Director in order to be reimbursed, which approval will indicate the availability of funds. When such work is undertaken, the CONRAC Manager shall so notify City and will proceed diligently to complete such work. The CONRAC Manager shall submit invoices to the City for approval, and, once approved, the City will forward invoices to the Trustee for payment. In the event of a shortfall in the Major Maintenance Account, the Operators will pay to the CONRAC Manager their Pro Rata Share of that shortfall. The Operators’ payment to the CONRAC Manager for the actual cost of CONRAC Major Maintenance will be reimbursed from available funds in the CFC Renewal and Replacement Fund if, as, and when Major Maintenance is performed.

### **Section 15.4 MAJOR MAINTENANCE FUNDING.**

Major Maintenance, whether performed by City or Operators, will be funded from the CFC Renewal and Replacement Fund. CFC Renewal and Replacement Fund requirements will be included in the calculation of the daily Customer Facility Charge rate per Transaction Day. If sufficient funds are not available in the CFC Renewal and Replacement Fund, Aviation Director may transfer funds from the CFC Surplus Fund. If funds are not transferred from the CFC Surplus Fund and a shortfall still exists, it is the obligation of the Operators to pay the costs of CONRAC Major Maintenance, and it is the obligation of the City and Operators together to pay the cost of Facility Major Maintenance. Operator(s) shall pay City (including a reasonable charge for City’s administrative costs) for Operator’s Pro Rata Share of the unfunded cost of Facility Major Maintenance for each Lease Year. The Operators’ share of the Facility Major Maintenance will be based on the apportionment between the City and the Operators determined in **Section 6.1.1**. As funds are available, the City and/or Operators shall be reimbursed for payments made for Major Maintenance from the CFC Renewal and Replacement Fund until the City and Operators are completely reimbursed.

### **Section 15.5 ROUTINE MAINTENANCE.**

The CONRAC Manager, on behalf of the Operator, will perform all CONRAC Routine Maintenance using the CFC Eligible Routine Maintenance Account or the Facilities Maintenance Fee. Any shortfall will require adjustments to the Facility Maintenance Fee or additional payments by the Operators, if the Facility Maintenance Fee is insufficient.

### **Section 15.6 CATEGORIES OF CONRAC ROUTINE MAINTENANCE.**

There are two categories of CONRAC Routine Maintenance: (i) CFC Eligible Routine Maintenance and (ii) Non-CFC Eligible Routine Maintenance.

#### **15.6.1 CFC Eligible Routine Maintenance.**

CFC Eligible Routine Maintenance, as defined herein, will be the obligation of and paid for by the Operators through the CONRAC Manager. CFC Eligible Routine Maintenance (“**CFC Eligible Routine Maintenance**”), means the following Routine Maintenance: maintenance of the Facility’s vertical circulation (elevators and escalators); janitorial services, Utilities Costs, and maintenance in the public view areas of the Customer Service Center; CONRAC wayfinding signage after the initial wayfinding signage included in Project Costs; and CONRAC’s percentage allocation (based on **Section 6.1.1**) of Routine Maintenance and replacement thereof for expenses incurred by the City on the entire Facility, including but not limited to, maintenance of the exterior of the CONRAC, including landscaping, finishes and lighting. The Operators may be reimbursed for CFC Eligible Routine Maintenance expenses subject to the availability of funds in the Routine Maintenance Reimbursement Account in the CFC Surplus Fund, pursuant to **Section 3.3** subparagraph 8.

#### **15.6.2 Non-CFC Eligible Routine Maintenance.**

“**Non-CFC Eligible Routine Maintenance**” means the costs of Routine Maintenance not included in **Section 15.3.1**. Non-CFC Eligible Routine Maintenance will be the obligation of the Operators, through the CONRAC Manager, and will be paid for by the Operators from the Facility Maintenance Fee, or additional payments by Operators, if the Facility Maintenance Fee is insufficient.

#### **Section 15.7 RENEWALS AND REPLACEMENTS.**

The foreseeable and unforeseeable Facility, CONRAC, and QTA renewal and replacement requirements will be funded from the CFC Renewal and Replacement Fund.

#### **Section 15.8 CITY SERVICES COST RECOVERY.**

The City may perform, but shall not be obligated to perform, any maintenance, repairs or restoration work that is the Operators’, or any particular Operator’s, responsibility, if requested to do so in writing by the Operators or any specific Operator. In the event the City performs such work, the Operator(s) or CONRAC Manager requesting the work shall pay for such work (specifically including a reasonable allocation for City administrative costs) within thirty (30) days of invoice by the City. Interest shall accrue on all unpaid sums.

In the event that the City incurs or otherwise pays any costs or expenses for maintenance or services that are otherwise required to be performed by the Operators through the CONRAC Manager, the City shall have the right to reimbursement from the Operator(s) through the CONRAC Manager, who shall pay the City for any such costs directly on such payment terms as the City otherwise generally extends to the Operators or other tenants on or about the Airport.

#### **Section 15.9 OPERATIONS AND MAINTENANCE MANUAL.**

The Operators shall, through the CONRAC Manager, prepare or have prepared an operations and maintenance manual (“**Operations Manual**”) that addresses the operation, maintenance and repair of the CONRAC. The Operations Manual shall be submitted to the Aviation Director for review and shall be updated as needed, to address the City’s, CONRAC Manager’s, the Operators’ and each Operator’s operations and practices. The Operations Manual shall: (i) be consistent with the City Standards ; (ii) be provided to the City at least sixty (60) days before the DBO or not more than thirty (30) days after any update; (iii) be prepared in coordination with City staff; (iv) with respect to any

equipment located in, on or about the CONRAC, be consistent with warranty requirements, manufacturer's recommendations and Best Management Practices approved by the City; (v) be consistent with all Legal Requirements; (vi) be consistent with the Storm Water Pollution Prevention Plan and Spill Prevention Control and Countermeasures Plan; (vii) be updated to address future changes in CONRAC activities or facilities; (viii) adhere to and be consistent with all environmental requirements set out in this Lease Agreement; (ix) shall include the requirements for operations of the Fuel Facilities as required under **Section 20.6.2**; and (x) be consistent with Environmental Law. The Operations Manual shall be included as **Exhibit J** to this Lease Agreement, when completed, and as amended from time to time.

### **Section 15.10 FAILURE OF THE OPERATORS TO PERFORM REQUIRED MAINTENANCE.**

In the event the Operators, through the CONRAC Manager, or any individual Operator, fail: (i) to commence, within thirty (30) days after written notice from the City, any maintenance or repair work to the CONRAC required to be done under the provisions of this Lease Agreement; (ii) to commence such work within a period of ninety (90) days if such notice specifies that the work to be accomplished involves preventive maintenance only; or (iii) to diligently continue to completion any such work as required under this Lease Agreement; then the City may, at its option, and in addition to any other remedies which may be available to it, enter the CONRAC (without such entering causing or constituting a cancellation of this Lease Agreement or an interference with Operator's possession of the Leased Premises), and repair, maintain, replace, or rebuild all or any part of the CONRAC and do all things reasonably necessary to accomplish the work required, and the cost and expense (specifically including an allocation of City administrative costs in a reasonable amount) shall be payable to the City by the Operators, each in accordance with its respective Pro Rata Share, or the respective Operator, if the responsibility of only one Operator, on written demand; provided, however, if, in the reasonable opinion of the Aviation Director, the failure to perform any such repair or maintenance endangers the safety of the public, the employees or other tenants at the Airport, and the City so states same in its notice to the Operator(s), the City may perform such maintenance at any time after the giving of such notice.

#### **15.10.1 No Obligation.**

Should the City, its officers, employees, agents, or contractors undertake any work pursuant to **Section 15.7** above, the Operators hereby waive any claim for damages, consequential or otherwise, as a result of undertaking such work. The foregoing shall in no way affect or alter the primary obligations of Operators as set forth in this Lease Agreement, and shall not impose or be construed to impose upon the City any obligation to maintain the CONRAC, unless otherwise specifically provided in this Lease Agreement.

#### **15.10.2 No Abatement.**

If this Article imposes upon the City an obligation, or otherwise provides to the City a right of repair or maintenance, the City will perform any such repair or maintenance work called to its attention within a reasonable period of time after receipt of such notice by the City. There shall be no abatement or reduction of any financial or other obligation of Operator, Operators or CONRAC Manager under this Lease Agreement or the Concession Agreement by reason of the City's making repairs, alterations and/or improvements to the CONRAC, or otherwise.

#### **15.10.3 Right to Assume Maintenance.**

In the event that the City issues three (3) or more notices under **Section 15.7** above within an eighteen

(18) month period, the City shall have the right (but not the obligation) to assume responsibility for the repair and maintenance of the CONRAC or so much of it, whether Common Use Area, Exclusive Use Premises, or otherwise, by issuing notice to the affected Operator or Operators indicating its intent to, until further notice, assume responsibility for such repair and maintenance. Such notice must be issued within one hundred twenty (120) days of the issuance of the third (or any subsequent) notice under **Section 15.7** above. In such event, all costs associated with the repair and maintenance shall be the responsibility of the affected Operator(s). The City shall have the right, on sixty (60) days' notice to the affected Operator or Operators, to require the Operator(s) to resume responsibility for repair and maintenance as set forth in this Article.

#### **15.10.4 Repair Required as Result of Neglect.**

To the extent that repairs made by the City pursuant to this Article are required by reason of the neglect, carelessness or misuse of any particular Operator, its employees, agents, invitees, licensees, or contractors, the City shall perform such repairs at such Operator's cost and expense. Operator shall pay for such work (specifically including a reasonable allocation for the City overhead) within thirty (30) days of invoice by the City. Interest shall accrue on all unpaid sums.

#### **15.10.5 No Responsibility to CONRAC Manager.**

In the event that the City exercises any right or performs an obligation under this **Section 15.7**, the City shall have absolutely no responsibility or liability to the CONRAC Manager. In the event that the City elects to assume responsibility for maintenance as allowed by **Section 15.7.3**, the City shall, notwithstanding any contrary term of the CONRAC Management Contract, specifically have the right to direct the CONRAC Manager to vacate the CONRAC.

#### **15.10.6 Damage and Destruction.**

In addition to, and not in lieu of, any requirement set forth in this Article, the City shall also have the obligation of restoration and repair as set forth more specifically in **Article 21**, but limited to insurance proceeds or CFCs.

#### **Section 15.11 QUARTERLY CONDITION SURVEYS.**

The City and the CONRAC Manager shall conduct an inspection of the CONRAC quarterly to observe and note the condition, cleanliness, and existing damage to the CONRAC, and to determine repairs and maintenance required to be performed. Not less than fourteen (14) days before a scheduled inspection, the Operators, through the CONRAC Manager, shall prepare a report documenting the preventive and corrective maintenance actions planned and performed during the prior quarter. Notwithstanding the foregoing, the Operators shall not be required to participate in the quarterly inspections so long as each Operator who elects not to participate vests the CONRAC Manager with authority to address the matters to be reviewed during the scheduled inspection. The report shall be provided in both hardcopy and electronic forms, with the electronic forms in Microsoft Office or other format reasonably specified or approved by the Aviation Director for import into the City's maintenance management software. In the event of any dispute regarding those repairs and maintenance required to be performed, the Aviation Director's decision shall be final. Responsibility for repairing any problems or defects noted shall be as provided in this Article.

#### **Section 15.12 ENGINEER'S REPORT.**

Once every two (2) years the City shall retain an independent engineer, qualified to conduct facilities inspections, for the purpose of inspecting the CONRAC. The engineer shall conduct an inspection of the CONRAC, including but not limited to structural and mechanical assessments, and the Facility, to observe and document the condition of the CONRAC and its systems and equipment and identify existing damage to the CONRAC and to determine repairs and maintenance required to be performed. The engineer's finding will be memorialized in the "Engineer's Report" which will be given to the Operator and the CONRAC Manager so that the repairs and maintenance recommended by the engineer can be accomplished. The Engineer's Report will be paid from the CFC Renewal and Replacement Fund.

END OF ARTICLE

## ARTICLE 16 UTILITIES

### **Section 16.1** GENERALLY.

Beginning on the Commencement Date and continuing thereafter during the Lease Term, the Operators shall pay the Utilities Costs, whether billed to the City, the CONRAC Manager or the Operators (or any of them).

### **Section 16.2** ENERGY CONSERVATION; RECYCLING.

The Aviation Director shall have the right to institute such reasonable policies, programs and measures as may be necessary or desirable, in the Aviation Director's discretion, for the conservation and/or preservation of energy, energy related services or other resources, to promote considerations of sustainability, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

### **Section 16.3** CITY NOT RESPONSIBLE.

The City shall not be liable in any way to Operator for any failure or defect in the supply or character of electrical energy, water, sewer or other utility service furnished to the Leased Premises by reason of any requirement, act or omission of the public utility providing such service or for any other reason. The City shall have the right to shut down electrical or other utility services to the Leased Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason necessary for Airport operations, with respect to any such utility system (singularly or collectively, "**Utility Work**"), regardless of whether the need for such Utility Work arises in respect of the Leased Premises, any other part of the CONRAC, the Facility or Facility Site. Whenever possible, the City shall give Operator no less than two (2) days prior notice for such utility shutdown. The City shall not be liable to Operator for any losses, including loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Leased Premises.

END OF ARTICLE



## **ARTICLE 17 INDEMNITY**

### **Section 17.1 INDEMNIFICATION OF CITY BY OPERATOR.**

OPERATOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO OPERATOR'S ACTIVITIES UNDER THIS LEASE AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF OPERATOR, CONRAC MANAGER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF OPERATOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS LEASE AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT OPERATOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS LEASE AGREEMENT.

The provision of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other Person or entity. OPERATOR shall advise the CITY in writing within twenty-four (24) hours of any claim or demand against the CITY or OPERATOR known to OPERATOR related to or arising out of OPERATOR's activities under this AGREEMENT LEASE and shall see to the investigation and defense of such claim or demand at OPERATOR's costs. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving OPERATOR of any of its obligations under this paragraph.

## ARTICLE 18 INSURANCE

### Section 18.1 CITY INSURANCE

City shall maintain all-risk property insurance on the Facility during the Term of this Lease Agreement.

### Section 18.2 OPERATOR INSURANCE

A) Prior to the commencement of any work under this Agreement, Operator shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "*Consolidated Rental Car Facility Lease Agreement*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed reasonably necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk. City will give Operator at least sixty (60) days written notice of review and thirty (30) days to comply with modifications after City notifies Operator of modifications.

C) A Operator's financial integrity is of interest to the City; therefore, subject to Operator's right to maintain reasonable deductibles or self insured retentions in such amounts as are approved by the City, Operator shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Operator's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$2,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence
5. Builder's Risk (if applicable)	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. Property Insurance: For physical damage to the property of Operator, including improvements and betterment to the Leased Premises installed by Operator	Coverage written on occurrence basis for replacement value of the cost of Operator's property. The policy shall also provide coverage for Business Income including Extra Expenses resulting from direct physical loss or damage to the property. The City shall be included as a Loss Payee on Operator's property insurance policy with respect to the City's interest in Improvements and Betterments.
7. Operator's Pollution Liability (Claims made basis)	\$5,000,000 per occurrence; \$10,000,000 general aggregate.

Operator shall have the right to self-insure Workers' Compensation coverage and Auto Liability coverage only in accordance with the requirements set forth in **Exhibit 4 to the Concession Agreement**.

D) Operator agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Operator herein, and provide a certificate of insurance and endorsement that names the Operator and the City as additional insureds.

Operator shall keep said certificates on file and shall provide the City with said certificate and endorsement when requested. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes. No such modification can take place until Operator has been given sixty (60) days written notice of modification and thirty (30) days to comply after notification.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the declaration page, and all endorsements thereto. Operator shall be required to comply with any such requests and shall submit a copy of the declaration page to City at the address provided below within 10 days of the request.

City of San Antonio  
Attn: Aviation Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

F) Operator agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies; and property policies will name City as Loss Payee and not additional insured;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and
- Provide a thirty (30) day advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Operator shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Operator's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon Operator's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Operator to stop work hereunder, and/or withhold any payment(s) which become due to Operator hereunder until Operator demonstrates compliance with the

requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which Operator may be held responsible for payments of damages to persons or property resulting from Operator's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Operator's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L) Operator and any Subcontractors are responsible for all damage to their own equipment and/or property.

END OF ARTICLE

## ARTICLE 19 COMPLIANCE WITH ENVIRONMENTAL LAWS

### Section 19.1 DEFINITIONS IN ARTICLE 19 AND ARTICLE 20.

**“Environmental Audit”** means an environmental compliance audit consistent with any applicable or relevant and appropriate assessment or auditing standards, including, but not limited to, CERCLA § 101(35)(B) (42 U.S.C. § 9601(35)(B)), 40 C.F.R. Part 312, and ASTM Standard *E2107-00 Standard Practice for Environmental Regulatory Compliance Audits*. An Environmental Audit should be conducted under audit privilege laws, including the Texas Environmental, Health and Safety Audit Privilege Act, Tex. Rev. Civ. Stat. Ann. Art. 4447cc (Vernon’s).

**“Environmental Baseline Study”** means the study conducted for the City that characterizes the environmental conditions at the Project Site prior to construction of the CONRAC. The study is documented in a report entitled Consolidated Rent-A-Car Facility San Antonio International Airport San Antonio, Texas Environmental Baseline Survey July 2014 prepared by Freese and Nichols Inc. and as confirmed by the report entitled: “Phase I Environmental Site Assessment and Limited Phase II Subsurface Investigation of Proposed Consolidated Rent-A-Car (ConRAC) Facility San Antonio International Airport San Antonio, Texas 78216, CardnoATC Project No. TS.SAT1501 April 3, 2015.” The Environmental Baseline Study may be updated and supplanted by an Updated Environmental Baseline Study.

**“Environmental Baseline Study Update”** means an investigation of site environmental conditions sufficient to identify changes in environmental conditions at the Project Site as compared to the Environmental Baseline Study or the most recent Updated Environmental Baseline Study. The Environmental Baseline Study Update shall meet at least the minimum standards of American Society for Testing and Materials (“ASTM”) Standard *D6008 -96(2014) Standard Practice for Conducting Environmental Baseline Surveys*, or ASTM Standard 1527-13 Standard for completing Phase I Environmental Site Assessments, or its latest version.

**“Environmental Claims”** means, without limitation, all claims, demands, suits, actions, judgments, and liability for: (i) spills, discharges, releases, removal, remediation, assessment, transportation, testing or disposal of Hazardous Materials; (ii) bodily injury or death; (iii) damage to or loss of use of property of any Person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, truces, demands, orders, directives or any other requirements imposed in any manner for violation of Environmental Laws by any governmental agency; and (vi) costs and expenses of cleanup, remediation, assessment testing, investigation, transportation and disposal of a Hazardous Material spill, release, or discharge.

**“Environmental Law” or “Environmental Laws”** means any law pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et. seq.*); the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et. seq.*); the Toxic Substances Control Act (15 U.S.C. § 2601, *et. seq.*); the Clean Water Act (33 U.S.C. § 1251, *et. seq.*); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et. seq.*); the Clean Air Act (42 U.S.C. § 7401, *et. seq.*); the Atomic Energy Act (42 U.S.C. § 2011, *et. seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et. seq.*); the Emergency Planning and Community Right-To-Know Act (42 U.S.C.

11001, *et. seq.*); the Endangered Species Act of 1973 (16 U.S.C. §1531, *et. seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, *et. seq.*); the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, *et. seq.*); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 et seq.); the Surface Mining Control And Reclamation Act (30 U.S.C. 1201 et seq.) and state and local counterparts of each of the foregoing.

**“Fuel Spill Response Plan”** means the written plan adopted by the Airport in 2002 to help the airport and tenants plan for and respond to emergency fuel spills at the Airport, as may be amended from time to time.

**“Hazardous Materials”** means, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, and includes all Hazardous Substances.

**“Hazardous Substance”** means all materials, substances, or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any Environmental Law, whether by type or by quantity, and shall include petroleum or any derivative or by-product thereof, and asbestos and asbestos containing materials.

**“Pre-Lease Agreement Environmental Condition”** means the site environmental condition prior to construction of the Facility as determined in the Environmental Baseline Survey, or any Updated Environmental Baseline Survey.

**“Spill Prevention Control and Countermeasures Plan” or “SPCC Plan”** means a written plan required by Environmental Law, that includes a risk evaluation performed by a Professional Engineer and that describes the storage of petroleum products (as defined in 40 C.F.R. 112.7) and spill response procedures as they relate to the storage and use of petroleum products. The SPCC Plan shall be prepared by the CONRAC Manager and adopted by each of the Operators.

**“Storm Water Pollution Prevention Plan” or “SWPPP”** means a written plan required by the Clean Water Act or other Environmental Law, or if not required by Environmental Law, an equivalent plan required by the City for the Project Site, prepared by the CONRAC Manager and adopted by each of the Operators for the CONRAC, that describes the Project Site (including, but not limited to, the Fuel Facilities) and adjacent Airport properties (including roadways) and the management, training, operational, and monitoring activities and requirements in place to prevent illicit discharges to the waters of the United States or other deleterious materials (e.g., total suspended solids) from, or in connection with, the Project Site; control and remediate spills or releases; and/or meet other environmental permit requirements related to releases from, or in connection with, the Project Site.

**“Storm Water Best Management Practices” or “BMPs”** mean the schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants from storm water discharges. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas. BMPs include all BMPs developed by the CONRAC Manager, and all BMPs shall be subject to approval by the Aviation Director.

**“Updated Environmental Baseline Study”** means the Environmental Baseline Study as updated by the most recent Environmental Baseline Study Update or other environmental investigation meeting at least the minimum standards of *D6008 -96(2014) Standard Practice for Conducting Environmental Baseline Surveys*, , or ASTM Standard 1527-13 Standard for completing Phase I Environmental Site Assessments, or its latest version.

### **Section 19.2 ENVIRONMENTAL COMPLIANCE.**

In its operations on the Leased Premises and at the Airport, Operator shall strictly comply with all applicable Environmental Laws, the Airport Rules and Regulations (including without limitation, the SWPPP, SPCC, and Fuel Spill Response Plan), and other Airport environmental policies and procedures as may be promulgated from time to time. Without limiting the generality of the foregoing provision, Operator shall not use or store Hazardous Materials on or at the Leased Premises or Airport except as reasonably necessary in the ordinary course of Operator's permitted activities at the Leased Premises and Airport, and then only if such Hazardous Materials are properly labeled and contained as required pursuant to Applicable Laws, and an annual inventory and a copy of the current material safety data sheet is provided to the City for each such Hazardous Material. Prior to commencing operations at the Leased Premises or Airport, Operator must complete an Airport environmental questionnaire. Operator shall not discharge, release, or dispose of any Hazardous Materials on the Leased Premises or Airport or surrounding air, lands or waters in violation of Applicable Laws. Operator shall promptly and no later than 24 hours after occurrence notify City of any Hazardous Material spills, releases, or other discharges by Operator at the Airport in accordance with City's Fuel Spill Response Plan and promptly abate, remediate, and remove any of the same to the extent required under Applicable Laws. Operator shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental Laws by Operator at the Leased Premises or Airport within ten (10) days after such documents are generated by or received by Operator. If Operator uses, handles, treats, or stores Hazardous Materials at the Leased Premises or Airport, Operator shall arrange for the proper storage, handling, and disposal of the Hazardous Materials, and shall comply with all applicable Environmental Law regarding waste characterization, transportation, and disposal. Complete records of all disposal manifests, receipts and other documentation required by Applicable Law shall be retained by the Operator and/or CONRAC Manager and made available to the City for review upon request. The City shall have the right at any time to enter the Leased Premises to inspect, take samples for testing, and otherwise investigate the Leased Premises for the presence and proper management of Hazardous Materials. In exercising its right of access, City shall endeavor to minimize disruption of or interfere with Operator's operations or use of the Leased Premises. Operator will comply with Occupational Safety and Health Administration (“OSHA”) hazard communications laws, 29 C.F.R. 1910.1200 *et seq.*, and Texas hazard communication laws. All waste containers shall be labeled with the name of the Operator, to avoid orphaned or wandering waste containers.

### **Section 19.3 HAZARDOUS MATERIALS RESPONSIBILITY.**

Operator's Hazardous Materials shall be the responsibility of Operator. Operator shall not allow the release, spill, discharge, leak, emission, injection, escape, migration or dumping in, on, about, from or adjacent to the Leased Premises (including storm drains, sanitary sewer system, surface waters, soils, underground waters or air) of any Hazardous Material or other deleterious substance in any manner that could be a detriment to the Leased Premises or in violation of the Pollution Prevention Plan, the SPCC Plan, any City Codes and City Standards, any City



Environmental Permit or any Environmental Law. All reporting and notice requirements under Environmental Laws with respect to spills, releases, or discharges of Hazardous Materials by Operator at the Leased Premises or Airport shall be the responsibility of Operator. Operator shall promptly notify City of any report or notice in accordance with **Section 19.9**.

**Section 19.4 STORMWATER REQUIREMENTS.**

Operator acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program (“**NPDES**”), Federal Stormwater Regulations (40 C.F.R. Part 122) and the Texas Pollution Discharge Elimination System Program (“**TPDES**”). The Airport currently has a delegated shared SWPPP, and the CONRAC Manager shall prepare and implement a unified SWPPP for the Facility and the Project Site for all Operators, and coordinate the Facility’s SWPPP with the Airport’s delegated shared SWPPP. The CONRAC Manager shall provide a copy of the SWPPP to the City not more than thirty (30) days before the DBO. Operator shall be responsible for updating the SWPPP to address future changes in the Leased Premises or activities, operations and practices of Operator upon the Leased Premises.

**Section 19.5 SUSTAINABILITY.**

Operator shall comply with Applicable Laws and policies pertaining to recycling, energy, and natural resource conservation and management. Operator shall cooperate with the City in the implementation of energy conservation, water conservation, alternative fueling, emissions reduction, and waste minimization programs and policies the City establishes from time to time.

**Section 19.6 SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN.**

Operator shall, through the CONRAC Manager, determine whether Section 112.7 of Title 40 of the Code of Federal Regulations is applicable to the Operator's Exclusive Use Premises, the CONRAC and its operations, and whether Operator is required to prepare an SPCC Plan. This determination must be submitted to City for approval, with a copy to the City. Preparation of any Operator SPCC Plan shall be the responsibility of Operator, but may be accomplished by arrangements with the CONRAC Manager. Any SPCC Plan must be certified by a licensed Professional Engineer in accordance with all applicable Legal Requirements (specifically including Environmental Laws) and an up-to-date copy thereof shall be furnished at all times to the CONRAC Manager.

**Section 19.7 SURVIVAL.**

The covenants, conditions, and indemnities in this Article shall survive the expiration or earlier termination of this Lease Agreement.

**Section 19.8 PRE-LEASE AGREEMENT ENVIRONMENTAL CONDITION.**

An Environmental Baseline Survey was conducted prior to construction of the Facility, which identifies the Pre-Lease Agreement Environmental Condition. The costs associated with the Pre-Lease Agreement Environmental Evaluation and determination of the Pre-Lease Agreement Environmental Condition shall be Project Costs. The FAA issued a Finding of No Significant Impact (“**FONSI**”) on August 12, 2014.

**Section 19.9 PERMITS, REPORTS, AND NOTICES.**

Operator shall make available to the City upon request copies of all material safety data sheets for all Hazardous Materials used or stored on the Leased Premises by Operator, Operator's U.S. Environmental Protection Agency waste generator number, and its generator annual hazardous waste reports. Within seventy-two (72) hours of receipt or transmission, whichever first occurs, Operator

shall provide City with copies of any environmentally related regulatory permits or approvals (including revisions or renewals) and any material report or notice Operator receives from, or provides to, any Governmental Authority in connection with the handling of Hazardous Materials on the Leased Premises or the presence, or possible presence, of any Hazardous Material in, on, about, from or adjacent to the Leased Premises. Operator shall report to the City any spills or emissions of Hazardous Materials resulting from the acts or omissions of the Operator in accordance with the City's Fuel Spill Response Plan and to report to the appropriate Governmental Authorities any spills or emissions of Hazardous Materials by the Operator that are above reportable quantities as defined by applicable Environmental Laws.

**Section 19.10 VIOLATION OF ENVIRONMENTAL LAWS.**

If Operators are in violation of any Environmental Law concerning the presence or use of Hazardous Materials or the handling or storing of hazardous wastes, Operators shall promptly take such action as is necessary to mitigate and correct the violation. If Operators do not act in such a manner, the City has the right, but not the obligation, to come onto the Leased Premises, to act in place of Operators (and Operators hereby appoint the City as their agent for such purposes) and to take such action as the City deem necessary to ensure compliance or to mitigate the violation. If the City has a reasonable belief that Operator is in violation of any of the Environmental Laws, or that Operator's acts or omissions present a threat of violation or a threat of damage to the Leased Premises, the City have the right to enter onto the Leased Premises and take such corrective or mitigating action as it deems necessary. All reasonable and necessary costs and expenses incurred by the City, respectively, in connection with any such actions shall become immediately due and payable by Operators upon presentation of an invoice therefor. Interest shall accrue on all unpaid sums.

**Section 19.11 INSPECTION: TEST RESULTS.**

The City shall have access to the Leased Premises to conduct (but shall have no obligation to conduct) environmental inspections, including an Environmental Audit, and Operator shall permit the City access to the Leased Premises for the purpose of conducting environmental testing, whether in connection with the City's action taken pursuant to **Section 19.10** hereof or for other City purposes. Except in the event of any real or threatened emergency, (a) environmental testing by the City shall occur only during normal business hours, or at such other times as Operator shall reasonably approve; (b) the City shall provide notice to Operator of its intention to conduct tests at least five (5) business days prior to such date of testing; (c) testing shall not unreasonably interfere with Operator's normal business operations; and (d) any damages to the Leased Premises caused by the environmental testing conducted by City shall be repaired by City at its sole cost and expense and any damages to the Leased Premises caused by the environmental testing conducted by the City shall be repaired by the City, at no cost and expense to Operator (other than Operator's Pro Rata Share of CONRAC Routine Maintenance). The Operator shall not conduct or permit others to conduct environmental media testing on the Leased Premises without first obtaining the City's prior consent. Operator shall within three (3) business days inform the City of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Leased Premises whenever Operator knows the same, and Operator shall provide copies thereof to the City, with the exception of Operator internal audits covered under attorney-client privilege. Notwithstanding such privilege, Operator shall have a duty to warn City of life/safety risks revealed by such an audit.

**Section 19.12 TERMINATION: REMOVAL OF EQUIPMENT AND HAZARDOUS MATERIALS.**

Prior to the expiration or earlier termination of this Lease Agreement, Operator shall remove or

remediate in accordance with applicable Environmental Laws and the Airport Rules and Regulations (including without limitation, the SWPPP, SPCC, and Fuel Spill Response Plan, and other Airport environmental policies and procedures as may be promulgated from time to time), all of Operator's Hazardous Materials from the Leased Premises and, if Operator is ceasing to operate at Airport, then from Airport, and surrounding lands and waters. Unless instructed otherwise by City, Operator shall also, prior to vacating the Leased Premises and Airport, remove all aboveground and underground storage tanks, piping and other equipment, if any, installed by or on behalf of Operator at the Facility which stored Hazardous Materials, or which are contaminated by Hazardous Materials, provided that Operator shall not at any time install or have installed any such storage tanks, piping or other equipment without express prior written consent of the City. Prior to expiration or earlier termination of this Lease Agreement, each Operator or Operators, through the CONRAC Manager, shall conduct an Environmental Baseline Study Update of the Leased Premises, and shall provide to the City an Updated Environmental Baseline Survey. This removal and demonstration shall be a condition precedent to the City's return of the Performance Guarantee to Operator upon the expiration or earlier termination of the Term.

**Section 19.13 REMEDIES NOT EXCLUSIVE.**

No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from the Operator whenever the City incurs any costs resulting from the use or management of Hazardous Materials on the Leased Premises by the Operator or Operators, including costs of remedial activities, fines or penalties assessed directly against the City, injuries to third Persons or other properties, and loss of revenues resulting from an inability to re-lease or market property due to its environmental condition, even if such loss of revenue occurs after the expiration or earlier termination of the Term.

**Section 19.14 ENVIRONMENTAL INDEMNITY.**

IN ADDITION TO ALL OTHER INDEMNITIES PROVIDED IN THIS LEASE AGREEMENT, OPERATOR AGREES TO DEFEND, INDEMNIFY AND HOLD CITY AND ITS ELECTED OFFICIALS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, FREE AND HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, REGULATORY DEMANDS, LIABILITIES, FINES, PENALTIES, LOSSES, AND EXPENSES, INCLUDING REMEDIAL COSTS (AND INCLUDING REASONABLE ATTORNEYS' FEES, COSTS AND ALL OTHER REASONABLE LITIGATION EXPENSES WHEN INCURRED AND WHETHER INCURRED IN DEFENSE OF ACTUAL LITIGATION OR IN REASONABLE ANTICIPATION OF LITIGATION ARISING FROM THE EXISTENCE OR DISCOVERY OF ANY HAZARDOUS MATERIAL ON THE LEASED PREMISES, OR THE MIGRATION OF ANY HAZARDOUS MATERIAL FROM THE LEASED PREMISES TO OTHER PROPERTIES OR INTO THE SURROUNDING ENVIRONMENT, ARISING OR RESULTING FROM ANY ACT OR OMISSION OF THE OPERATOR OR OPERATORS, WHETHER (A) MADE, COMMENCED OR INCURRED DURING THE LEASE TERM, OR (B) MADE, COMMENCED OR INCURRED AFTER THE EXPIRATION OR TERMINATION OF THE LEASE TERM IF ARISING OUT OF EVENTS OCCURRING DURING THE LEASE TERM; PROVIDED, HOWEVER, OPERATOR'S OBLIGATION TO INDEMNIFY THE CITY PURSUANT TO THIS SECTION SHALL NOT APPLY WITH RESPECT TO ANY RELEASE OF A HAZARDOUS MATERIAL CLEARLY ARISING OUT OF ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES, WHICH DEFECT IS DISCOVERED WITHIN ONE YEAR AFTER THE COMMENCEMENT DATE. THE OPERATOR'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER

TERMINATION OF THE LEASE TERM.

**Section 19.15 TERM OF ENVIRONMENTAL PROVISIONS.**

The provisions of **Articles 19 and 20**, including the representations, warranties, covenants and indemnities of Operators and/or each Operator, shall expressly survive termination of this Lease Agreement, and Operators' and/or each Operator's obligations and liabilities under **Articles 19 and 20** shall continue so long as the City bears any liability or responsibility under Environmental Law arising from Operators' and/or each Operator's occupancy or use of the Leased Premises and/or Airport during the term of this Lease Agreement.

END OF ARTICLE

## **ARTICLE 20 FUEL FACILITIES AND MANAGEMENT**

### **Section 20.1 FUEL FACILITIES.**

The City, as part of the construction of the Project, shall build, install and equip gasoline Fuel Facilities in the QTA for the use and benefit of the Facility and the Operators. The Fuel Facilities may include aboveground and underground fuel tanks, piping, and shall include automated fuel leak sensors, dispensers and other required and appropriate equipment to support the fueling of rental cars. In accordance with the allocation plan and procedures set forth in **Article 11**, Operator shall be allocated one or more specific fuel dispensers to fuel its rental cars. The Operator is hereby given a license to make beneficial use of the Fuel Facilities that support its allocated dispenser(s), provided that all portions of the Fuel Facilities other than the Operator's specifically designated dispenser(s) shall at all times remain in the exclusive operational control of the CONRAC Manager.

### **Section 20.2 FUEL AND ENVIRONMENTAL RESPONSIBILITIES.**

Operator shall operate its allocated fuel dispenser(s) in accordance with Environmental Laws and in such a manner as to prevent and eliminate fuel spills or damage to the Fuel Facilities. Operator shall be (a) responsible to train its employees who use its allocated fuel dispenser(s) in their proper use, care and maintenance, and (b) liable for any and all damage to the Fuel Facilities, the Facility or the environment arising from its employees' acts or omissions relating to its allocated fuel dispenser(s).

### **Section 20.3 FUEL SUPPLY.**

The Operators shall enter into a fuel supply agreement with the CONRAC Manager or a third-party fuel supplier to provide a continuous source of gasoline for the CONRAC, which fuel supply agreement shall be specifically subject to Aviation Director's approval, which approval shall not be unreasonably withheld. Any resulting agreement shall be negotiated by and among the parties, and the resulting fuel supply agreement shall have terms that provide for financial deposits, prompt payments, cross-defaults, and the authority and ability of the CONRAC Manager to turn off or otherwise disable any or all fuel dispenser(s) allocated to the Operators in the event that, and so long as, any payment from Operator for fuel is and remains unpaid more than ten (10) days after the date due.

### **Section 20.4 ADVANCE PAYMENTS AND DEPOSITS.**

The Operator, together with all other Operators, shall also pay any advance payment or deposit and any other amounts that the CONRAC Manager deems necessary and prudent to ensure a reliable supply of fuel sufficient for all Operators in Good Standing at the CONRAC.

### **Section 20.5 ENVIRONMENTAL ASSESSMENT.**

Within forty-five (45) days after (i) any change in the CONRAC Manager, at the sole cost and expense of the Operators under the CONRAC Management Contract; or (ii) any change in ownership or affiliation of Operator; or (iii) if any Operator vacates the Leased Premises for any reason, at said Operator's sole cost and expense, an Environmental Baseline Study Update of the CONRAC and, specifically, the Fuel Facilities, shall be performed to identify the nature and extent of any release of Hazardous Materials, if any, present on the CONRAC or the Facility Site since the Environmental Baseline Study or the most recent Updated Environmental Baseline Study. The Environmental Baseline Study Update shall be used to prepare a new Updated Environmental Baseline Study and the full report shall be given to the City identifying any change in the environmental condition of the CONRAC. Any contamination identified shall be subject to removal as more particularly set forth in **Section 19.12, Termination: Removal of Equipment and Hazardous Materials** and this Article.

## **Section 20.6 FUEL FACILITIES MANAGEMENT - OPERATION, MAINTENANCE, AND REPAIR RESPONSIBILITIES.**

Operator, through the CONRAC Manager, shall be responsible for the proper operation, maintenance, repair and use of the Fuel Facilities and the payment of all costs and expenses incurred for the operation, maintenance, repair and use of the Fuel Facilities, which costs and expenses shall be allocated to the Operators by Pro Rata Share, except for the cost of fuel, which shall be allocated to the Operators according to consumption. Operator shall be responsible and liable for the improper use of its allocated fuel dispenser(s), which costs shall be allocated as direct costs. Without limiting Operator's responsibility for its own acts or omissions, Operators shall be entirely responsible for all spill response, the immediate or other removal, investigation, remediation, restoration and other corrective actions, or site closure associated with a release of any Hazardous Material from the Fuel Facilities. Immediately upon becoming aware that a release of any Hazardous Material from the Fuel Facilities has occurred, the Operator, through the CONRAC Manager, shall inform City of such release in accordance with the Fuel Spill Response Plan. The City shall have no liability for, or responsibility for the payment of, any costs, expenses or liabilities incurred in connection with the operation, maintenance, repair and use of the Fuel Facilities or any fees, costs, or expenses or reimbursements due the CONRAC Manager.

### **20.6.1 CONRAC Manager – Immediate Action During Mishaps.**

In the event of any spill or release involving any Hazardous Material upon the CONRAC or Facility Site and/or any event or mishap that directly threatens the spill or release of any Hazardous Material upon the CONRAC, Operator, through the CONRAC Manager, will immediately take all necessary action to address such event, spill, release or other mishap in accordance with the Fuel Spill Response Plan and Environmental Laws.

### **20.6.2 Fuel Facilities Operations; Operator Cooperation and Compliance.**

Operator shall, through the CONRAC Manager, prepare the Fuel Facilities Operations procedures which shall be included in the Operations Manual. The Fuel Facilities Operations procedures shall: (i) be provided to City not more than thirty (30) days before the DBO (and not more than thirty (30) days after any update thereof); (ii) be prepared in coordination with City staff; (iii) describe in detail the fuel storage inventory and leak detection systems; (iv) be consistent with warranty requirements and the manufacturer's recommendations with respect to the Fuel Facilities; (v) be consistent with the Environmental Laws; (vi) be consistent with the Storm Water Pollution Prevention Plan, the SPCC Plan, Best Management Practices and all other Legal Requirements; (vii) include requirements for fuel delivery times, in accordance with FAA and City fire marshal requirements; and (viii) be updated to address future changes in the design, use or composition of the Fuel Facilities. The Fuel Facilities Operations procedures shall be subject to the prior approval of City and shall be updated as needed, but not less often than annually, to address the operations and practices of the CONRAC Manager and the RACs. Operator shall conduct all of its activities on, or relating to, the Fuel Facilities: (i) in compliance with Environmental Laws, the provisions of this Lease Agreement, City Codes and Standards and all other Legal Requirements; (ii) in cooperation with City in City's efforts to comply with the Environmental Laws; and (iii) in compliance with the Fuel Facilities Operations procedures. In the event of a conflict between any provisions of this Lease Agreement and the Environmental Laws, the more stringent provisions shall govern and control.

## **Section 20.7 NECESSARY PERMITS.**

The Operator shall obtain and maintain any and all necessary permits or consents required by

Environmental Laws with respect to its use of the Fuel Facilities, including registration and certification requirements for underground and aboveground storage tanks. For all permits, registrations, certifications and other authorizations required by Environmental Laws, the City shall be identified as the owner of facilities owned by the City, and the Operator shall be identified as the operator of facilities operated by the Operator. Prior to submitting any document to a federal or state regulatory authority wherein the City is identified as an owner, operator, or otherwise identified as a responsible party, the document shall be first submitted to the City for review and acceptance. The costs associated with obtaining and maintaining permits, registrations and other authorizations are CONRAC administrative expenses and will be reimbursed to the City from the Administrative Costs Fund described in **Section 3.3**. The Operator shall promptly furnish the City with copies of permits, registrations, and all other material correspondence between the Operator and any permitting agency.

#### **Section 20.8 ENVIRONMENTAL AUDIT.**

Operators, through the CONRAC Manager, shall hire an independent third party to conduct an Environmental Audit of the entire CONRAC (including the Fuel Facilities), and each Operator's and the CONRAC Manager's operations, equipment, facilities and fixtures on or about the CONRAC, every third (3rd) Lease Year after the DBO. Not later than thirty (30) days after completion of each Environmental Audit, the CONRAC Manager shall review the findings of the Environmental Audit with the City, together with a draft plan (including a performance schedule) to correct all deficiencies and compliance issues identified during the Environmental Audit. The City shall have thirty (30) days within which to comment upon the draft plan, and Operators, through the CONRAC Manager, shall promptly incorporate any comments of City into a final plan and correct all compliance issues according to the final plan (and performance schedule). Operators, through the CONRAC Manager, shall modify the Fuel Facilities Operations procedures or other operational plans and procedures associated with the Fuel Facilities as reasonably recommended by such Environmental Audit. Environmental Audits should be conducted under the Texas Environmental Health and Safety Audit Privilege Act, and the City shall be included as a person afforded the privileges provided and receiving immunity from penalties for violations of Environmental Laws discovered and disclosed to any regulatory authority.

#### **Section 20.9 SUBSEQUENT CITY ENVIRONMENTAL AUDIT.**

The City shall have the right to conduct its own Environmental Audit of the CONRAC and the operations, equipment, facilities and fixtures on or about the CONRAC Site. Upon being presented with any non-compliances discovered under the Environmental Audit, Operators, through the CONRAC Manager, shall provide the City with a draft plan (including a performance schedule) to correct all identified deficiencies and compliance issues. The City shall have thirty (30) days within which to review and comment upon the draft plan, and Operators, through the CONRAC Manager, shall promptly incorporate any City comments into a final plan and correct all compliance issues according to the final plan (and performance schedule). Operators, through the CONRAC Manager, shall modify the Fuel Facilities Operations procedures or other operational plans and procedures associated with the Fuel Facilities as reasonably recommended by any such Environmental Audit. In conducting any Environmental Audit, the City shall not unreasonably interfere with the business operations of the Operator or the Operators.

**Section 20.10 GENERAL STANDARDS.**

In determining those recommendations incorporated into any Environmental Audit that are reasonable (and therefore to be implemented), all recommendations shall be presumed reasonable unless Operator or CONRAC Manager can demonstrate in a manner acceptable to City that a recommendation (i) is not required by Legal Requirements; and (ii) the cost of implementing such recommendation significantly outweighs the benefits thereof.

**Section 20.11 FUEL FACILITIES ENVIRONMENTAL INDEMNITY.**

THE OPERATOR SHALL DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS COUNCIL MEMBERS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY DAMAGES, CLAIMS OR LIABILITY ARISING OUT OF OPERATOR'S USE OF THE FUEL FACILITIES ON OR ABOUT THE CONRAC OR OCCUPANCY OF THE FUEL FACILITIES ON OR ABOUT THE LEASED PREMISES, INCLUDING LIABILITY FOR INVESTIGATION AND REMEDIAL ACTION RELATED TO THE FOLLOWING OR SIMILAR ACTIVITIES OCCURRING DURING AND BY REASON OF ANY OF THE OPERATOR'S USE AND/OR OPERATION OF THE FUEL FACILITIES: (A) ANY RELEASES, SPILLS, DISCHARGES, LEAKS, EMISSIONS, INJECTIONS, ESCAPES, DUMPING, GENERATION, TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF HAZARDOUS MATERIALS; (B) ANY OTHER DISCHARGE TO SURFACE OR GROUND WATERS; (C) ANY AIR EMISSIONS; AND (D) ANY CONTAMINATION OF SOIL OR GROUND WATERS BENEATH OR ADJACENT TO THE CONRAC, EXCEPT FOR SUCH DAMAGE, CLAIMS OR LIABILITY (I) CAUSED BY THE CITY OR ITS OFFICERS, AGENTS OR EMPLOYEES, (II) ASSOCIATED WITH THE PRE-LEASE ENVIRONMENTAL CONDITION, (III) CLEARLY ARISING FROM ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES DISCOVERED WITHIN ONE (1) YEAR AFTER SUBSTANTIAL COMPLETION, OR (IV) ASSOCIATED WITH ANY HAZARDOUS MATERIAL CLEARLY MIGRATING ONTO THE CONRAC FROM SOME OTHER LOCATION THROUGH NO ACT OR OMISSION OF THE OPERATOR.

**Section 20.12 ENVIRONMENTAL CERTIFICATION.**

Operator, through the CONRAC Manager, shall provide to the City at the commencement of each Lease Year (other than the first Lease Year) a written statement that the Operator's occupation and use of the CONRAC, complied with (a) the Storm Water Pollution Prevention Plan, the SPCC Plan, the terms of all applicable permits, the Fuel Facilities Operations procedures and the Environmental Laws during the preceding Lease Year, and (b) all directions and recommendations set forth in any previous Environmental Audit. If the Operator, through the CONRAC Manager, is unable to provide such certification or documentation to City, it shall provide City with a written statement of the steps that are being taken to enable it to provide City with a certification of compliance and all required documentation.

END OF ARTICLE



## **ARTICLE 21 DAMAGE OR DESTRUCTION OF LEASE PREMISES**

### **Section 21.1 MINOR DAMAGE.**

Should the Leased Premises or the CONRAC be damaged by fire or other casualty, and if the damage is repairable within four (4) weeks from the date of the occurrence (with repair work and the preparations therefor to be done during regular working hours on regular work days), the Leased Premises (other than furniture, fixtures and equipment owned by Operator pursuant to **Section 12.4**) shall be repaired with due diligence by the City, but only to the extent insurance proceeds and CFCs are available for such repairs.

### **Section 21.2 MAJOR DAMAGE OR DESTRUCTION.**

Should the Leased Premises or the CONRAC be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within four (4) weeks of the occurrence, the City shall have the option to terminate this Lease Agreement on thirty (30) days' written notice, effective as of any date not more than sixty (60) days after the occurrence. In the event that this Section shall become applicable, the City shall advise Operator within thirty (30) days after the occurrence of any such damage whether the City has elected to continue the Lease Agreement in effect or to terminate it. If the City shall elect to continue this Lease Agreement in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the Leased Premises (other than furniture, fixtures and equipment owned by Operator pursuant to **Section 12.4**). If the City fails to notify Operator of its election within said thirty (30) day period, the City shall be deemed to have elected to continue this Lease Agreement. For the period from the occurrence of any damage to the Leased Premises to the date of completion of the repairs to the Leased Premises (or to the date of termination of the Lease Agreement if the City elects not to restore the Leased Premises), the Ground Rent shall be abated in the same proportion that the untenable portion of the Leased Premises bears to the whole thereof.

### **Section 21.3 OPERATOR'S IMPROVEMENTS.**

Operator shall, at its sole cost and expense, be responsible, without regard to the cause of loss, for any and all repair or restoration of any Initial Tenant Improvements, subsequent Alterations, or furniture, fixtures and equipment owned by Operator, which repair or restoration may be necessary as a result of any casualty. If any casualty event causes damage or loss to Operator's improvements, but has not otherwise affected the Leased Premises or triggered **Section 21.1** or **Section 21.2** of this Lease Agreement; and such damage or loss cannot be repaired within (4) weeks, and the loss results in a stoppage or shutdown of fifty percent (50%) or more of the Operator's use of the Leased Premises, the Operator shall give written notice to the City within four weeks of the occurrence of the casualty of its plan to remove debris and begin restoration and repairs to the Operator's Improvements on the Leased Premises. If after three (3) months from the day of the casualty the Operator has not begun repair or restoration efforts, or removed debris, the City has the option to terminate the Lease Agreement with thirty (30) days' notice to Operator. If after six (6) months, Operator's repairs or restoration efforts have not restored at least fifty percent (50%) of the damage to Operator's Improvements to their original condition, the City has the option to terminate the Lease Agreement with thirty (30) days' notice to the Operator.

### **Section 21.4 APPROVAL OF PLANS**

Prior to any repair or restoration described above, Operator shall submit plans and specifications to the Aviation Director for his written approval. Such repair or reconstruction shall be in accordance therewith. Any changes must be approved in writing in advance by the Aviation Director.

**Section 21.5 INSURANCE PROCEEDS.**

To the extent that the City receives, or is eligible to receive, any insurance proceeds under any property insurance policy paid for as part of the Reimbursable City Costs, for damage to any element(s) on or about the CONRAC for which the obligation for the repair belongs to Operator or the Operators under this **Article 21**, the City agrees to make such insurance proceeds available to Operator or Operators as the case may be; provided, however, in the event that Operator or Operators accept such funds, Operator or Operators shall then be required to adhere to any Legal Requirements by which the City otherwise would have been bound if it had undertaken the repairs.

END OF ARTICLE

## ARTICLE 22 SURRENDER AND HOLDING OVER

### Section 22.1 SURRENDER.

Upon expiration or earlier termination of this Lease Agreement, Operator shall promptly quit and surrender the Leased Premises in good condition and repair, normal wear and tear excepted, and deliver to the City all keys that it may have to any part of the Leased Premises or Airport.

### Section 22.2 OPERATOR'S PROPERTY REMOVAL.

Operator shall, subject to obtaining the written consent of the Aviation Director, which consent shall not be unreasonably withheld, at its sole cost and expense, remove the following from the Leased Premises:

- A. All of Operator's equipment and trade fixtures;
- B. All of Operator's signs, including but not limited to company identifiers, operational signs, illuminated directional signs, rental/return signs and stall numbers, and backwall displays;
- C. All control booths, kiosks and security devices for the benefit of Operator, whether installed by Operator, other Operators or the predecessor-in-interest of either;
- D. Operator's computer and other electrical equipment;
- E. Operator's telephone/data communication lines and associated equipment;
- F. Any Operator Vehicle Maintenance Equipment; together with all structure, enclosure and piping associated with such systems;
- G. All utilities (including, but not limited to, HVAC, electricity, water, sewer, conduit and lines) installed by Operator or Operator's predecessors in interest, back to point of connection to the City's utility systems; and
- H. Any improvements, whether installed at the commencement of the Lease Term or subsequently for which the City's consent was conditioned on Operator's removal of such improvements at the expiration or earlier termination of this Lease Agreement.

Unless otherwise specifically agreed by the City in writing, Operator shall diligently complete such removal at or before the termination (including by expiration) of this Lease Agreement.

### Section 22.3 HOLDING OVER.

It is agreed and understood that any holding over by Operator, with City's consent, after the termination of this Lease Agreement, shall not renew and extend same, but shall operate and be construed as a tenancy from month-to-month, upon all the terms and conditions set forth herein, except that rental shall be paid to City by Operator for the Ground Space and for all other payment obligations under this Lease Agreement at one hundred fifteen percent (115%) the total rental in effect as of the end of the term of this Lease Agreement.

Should Operator hold over against City's will, Operator agrees to pay to City, as monthly rent during such period of such non-consensual holding over, for the Leased Premises (including Ground Space and all payment obligations herein), for each month of such tenancy, at three hundred percent (300%) of the Ground Rent and other payment obligations paid for the last month of the Term, plus all applicable fees, including and any other fees authorized by this Lease Agreement and/or authorized by Ordinance. Operator shall be liable to City for all loss or damage resulting from such holding over against City's will after the termination of this Lease Agreement, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by City, in the event that Operator fails or refuses to surrender possession, shall not operate to give Operator any right to remain in possession beyond the period for which such amount has been paid, nor shall it constitute a waiver by City of its right to immediate possession thereafter.

**Section 22.4 SURVIVAL.**

Operator's obligations under this Article shall survive the expiration or earlier termination of this Lease Agreement. No modification, termination or surrender to the City of this Lease Agreement or surrender of the Leased Premises or any part thereof, or of any interest therein by Operator, shall be valid or effective unless agreed to and accepted in writing by the City, and no act by any representative or agent of the City, other than such written agreement and acceptance, shall constitute an acceptance thereof.

END OF ARTICLE

## **ARTICLE 23 IMPAIRMENT OF TITLE**

### **Section 23.1 LIENS.**

Operator will not directly or indirectly create or permit to be created and/or to remain a Lien upon the Leased Premises or any Alteration, the ownership of which is retained by the City. In the event any such Lien(s) have been created by or permitted by Operator in violation of this provision, Operator shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Operator shall also defend, fully indemnify, and hold entirely free and harmless the City from any action, suit or proceeding, which may be brought on or for the enforcement of such lien(s). Nothing in this Section shall, however, be interpreted as a limitation on Operator's ability to lease and/or finance its vehicle fleet and pledge, encumber or otherwise hypothecate title to its vehicles for such purpose; and the City expressly hereby subordinates, in a favor of any such vehicle lessor or lender, any interest it may have in such vehicles, whether arising under this Lease Agreement or as a matter of law.

END OF ARTICLE

## ARTICLE 24 DEFAULT

### Section 24.1 EVENTS OF DEFAULT.

The occurrence of any of the following events shall constitute an “Event of Default” on the part of the Operator with or without notice from the City:

A. Operator shall fail to pay any rent or other payment obligation including CFCs as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) days after receipt by Operator of written notice thereof.

B. Operator shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants contained in this Lease Agreement or the Concession Agreement or the Operators Member Agreement, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Operator of written notice of same, or if more than thirty (30) days shall be required because of the nature of the default, if Operator shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.

C. Operator shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.

D. An Order of Relief shall be entered, at the request of Operator or any of its creditors, under federal bankruptcy laws or any law or statute of the United States or any state thereof.

E. A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Operator and shall not be dismissed within thirty (30) days after the filing thereof.

F. Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Operator and such possession or control shall continue in effect for a period of fifteen (15) days.

G. Operator shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.

H. The rights of Operator hereunder shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, receivership, or other proceeding or occurrence described in Paragraphs C through G of this **Section 24**.

I. Operator shall voluntarily discontinue its operations at the Airport for a period of sixty (60)

consecutive days.

- J. Operator shall vacate or abandon the Leased Premises for a period of forty-eight (48) consecutive hours.
- K. Operator shall fail to collect and remit the CFC as required by this Lease Agreement.
- L. Operator shall fail to make any payment to the CONRAC Manager required by this Lease Agreement or the CONRAC Management Contract, following applicable notice and cure period.
- M. Operator shall fail to observe or perform any covenant, condition, or agreement to be observed or performed by Operator in the CONRAC Management Contract or the Operators' Member Agreement, following applicable notice and cure period.
- N. Any financial or background statement provided to the City by Operator, any successor, grantee, or assignee is materially false.

Notice of an Event of Default under this Section 24.1 shall be sent, in addition to the defaulting Operator, to the CONRAC Manager and to the designated Operator Chair per the Operators' Member Agreement at the time such notice is sent. Copies of the notice of default may be provided to all Operators then operating in the CONRAC, but are not required for purposes of providing notice of default under this Section 24.1.

## **Section 24.2 REMEDIES.**

### **24.2.1 Termination of Possession.**

In the event any default shall occur, City then, or at any time thereafter, but prior to the removal of such condition of default, shall have the right, at its election, to terminate Operator's right of possession of the Leased Premises, by giving at least ten (10) days written notice to Operator, at which time Operator will then quit and surrender the Leased Premises to City, but Operator's obligations under the Lease shall remain in full force and effect. At the expiration of said ten (10) days' notice period, City may enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Operator and those claiming under Operator, forcibly if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Operator or those claiming under Operator for such repossession.

### **24.2.2 Leased Premises Repossession.**

City's repossession of the Leased Premises shall not be construed as an election to terminate this Lease Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the Term hereof, unless a written notice of such intention be given to Operator, or unless such termination is decreed by a court of competent jurisdiction.

### **24.2.3 Relet Leased Premises.**

Upon repossession, City shall have the right, at its election and whether or not this Lease shall be terminated, to relet the Leased Premises or any part thereof for such period(s), which may extend beyond the term hereof, at such rent and upon such other terms and conditions as City may, in good

faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Operator and City agree that City's duty to relet the Leased Premises or otherwise to mitigate damages hereunder shall be limited to those requirements set forth in the Texas Property Code, as amended. City shall in no event be liable, and Operator's liability shall not be affected or diminished whatsoever, for failure to relet the Leased Premises, or, in the event the Leased Premises are relet, for failure to collect any rental under such reletting, so long as the City uses objectively reasonable efforts to comply with said Texas Property Code. City and Operator agree that any such duty shall be satisfied and City shall be deemed to have used objective reasonable efforts to relet the Leased Premises and mitigate City's damages by following the procedures set forth in **Section 11.5.1**.

#### **24.2.4 Reletting Revenue.**

In the event that City elects to relet, rentals received by same from such reletting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Operator under this Lease; second, to the payment of any cost of such reletting; third, to the payment of rent due and unpaid hereunder; and finally, the residue, if any, shall be held by City and applied hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Operator hereunder, then Operator shall pay such deficiency to City. Such deficiency shall be calculated and paid monthly. Operator shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such reletting not covered by the rentals received from such reletting of the Leased Premises.

#### **24.2.5 Remove Goods and Effects.**

If City shall terminate this Lease Agreement or take possession of the Leased Premises by reason of a condition of default, Operator and those holding under Operator, shall forthwith remove their goods and effects from the Leased Premises. If Operator or any such claimant shall fail to effect such removal forthwith, City may, without liability to Operator or those claiming under Operator, remove such goods and effects and store same for the account of Operator or of the owner thereof at any place selected by City, or, at City's election, and upon giving fifteen (15) days' written notice to Operator of date, time and location of sale, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as City in its sole discretion may deem advisable. If, in City's judgment, the cost of removing and storing, or of removing and selling any such goods and effects, exceeds the value thereof or the probable sale price thereof, as the case may be, City shall have the right to dispose of such goods in any manner City may deem advisable.

#### **24.2.6 Removal, Storage and Sale Costs; Right of Off-Set.**

Operator shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse the City from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds remain after such reimbursement, City may deduct from such surplus any other sum due to City hereunder and shall pay over to Operator any remaining balance of such surplus sale proceeds. In addition to the Performance Guarantee required under **Article 9**, City may off-set any sums it may hold on Operator's account, including unpaid Contingent Fee Reimbursements and Initial Tenant Improvement Reimbursements, against any amounts owed by Operator to City.

#### **24.2.7 No Right to Redeem or Re-Enter Leased Premises.**

If City shall enter into and repossess the Leased Premises as a result of Operator's default in the performance of any of the terms, covenants or conditions herein contained, then Operator hereby covenants and agrees that it will not claim the right to redeem or re-enter the Leased Premises to



restore the operation of this Lease, and Operator hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Operator, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Operator shall have made default under any of the covenants of the Lease and to claim any subrogation of the rights of Operator under these presents, or any of the covenants thereof, by reason of such payment.

**Section 24.3 REMEDIES CUMULATIVE.**

All rights, options and remedies of the City contained in this Lease 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, regardless of whether stated in this Lease Agreement.

END OF ARTICLE

## ARTICLE 25 TERMINATION

### Section 25.1 TERMINATION.

This Lease Agreement may be terminated by the City or Operator in advance of its scheduled expiration date on any of the following events.

### Section 25.2 TERMINATION BY CITY.

#### 25.2.1 Default.

Subject to any right to cure set forth in this Lease Agreement, City may terminate this Lease Agreement in the event of Operator's default under this Lease Agreement pursuant to **Section 24**.

#### 25.2.2 Federal Requirement.

In the event the City requires the Leased Premises for safety and security reasons as per federal requirements, the City may terminate this Lease Agreement or portions thereof by delivering to Operator notice of termination not less than one (1) year before the termination date specified in the termination notice.

#### 25.2.3 Taking.

In the event that any federal, state or local government or agency or instrumentality thereof (including the City) shall, by condemnation or otherwise, take title, possession or the right to possession of the Leased Premises or any part thereof, the City may, at its option, terminate this Lease Agreement as of the date of such taking, and if Operator is not in default under any of the provisions of this Lease Agreement on said date, any rent prepaid by Operator shall, to the extent allocable to any period subsequent to the Effective Date of the termination, be promptly refunded to Operator.

#### 25.2.4 Court Decree.

In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the City of any of its material obligations under this Lease Agreement, then either party hereto may terminate this Lease Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the Effective Date of termination) shall thereupon terminate. If Operator is not in default under any of the provisions of this Lease Agreement on the Effective Date of such termination, any rent prepaid by Operator shall, to the extent allocable to any period subsequent to the Effective Date of the termination, be promptly refunded to Operator.

### Section 25.3 TERMINATION BY OPERATOR.

The Operator, at its option, may declare this Lease Agreement terminated in its entirety, with no penalty to or further liability of Operator, upon the happening of any one or more of the following events:

#### 25.3.1 Injunction Or Restraining Order.

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

#### 25.3.2 City Abandons Airport.

The City abandons the Airport for a period of at least thirty (30) consecutive days and fails to operate and maintain the Airport in such manner as to permit landings and takeoffs of airplanes by scheduled air carriers.

**25.3.3 Material Interference With Operators' Normal Business.**

The Airport, the Facility, or the CONRAC, or a material portion thereof is destroyed, resulting in material interference with Operator's normal business operations or substantial diminution of Operator's Gross Revenues at the Airport for a period in excess of sixty (60) consecutive days.

**25.3.4 Taking by United States Government.**

An agency or instrumentality of the United States government or any state or local government occupies the Airport or a substantial part thereof for any reason, resulting in material interference with Operator's normal business operations or substantial diminution of Operator's Gross Revenues at the Airport for a period in excess of sixty (60) consecutive days.

**Section 25.4 CITY RIGHT TO ENTER LEASED PREMISES.**

The City shall have the right to enter the Leased Premises of Operator, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, fiber and communication services, and all other services and facilities, all as required by the City for its own use or benefit. The City and its authorized utility service provider are hereby granted a continuous easement or easements that the City believes is necessary within the Leased Premises, without any additional cost to the City for the purposes expressed hereinabove; provided, however, that the City by virtue of such use, does not substantially deprive Operator from its beneficial use or occupancy of the Leased Premises for an unreasonable period of time, not to exceed ten (10) working days, without consent of Operator.

END OF ARTICLE

## **ARTICLE 26 NO WAIVER; CITY'S RIGHT TO PERFORM**

### **Section 26.1 RECEIPT OF MONIES FOLLOWING TERMINATION.**

No receipt of monies by the City from Operator after the termination or cancellation of this Lease Agreement in any lawful manner shall (i) reinstate, continue or extend the Lease Term; (ii) affect any notice previously given to Operator; (iii) operate as a waiver of the rights of the City to enforce the payment of any Ground Rent, or other sums or charges otherwise payable by Operator then due or thereafter falling due; or (iv) operate as a waiver of the right of the City to recover possession of the Leased Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Lease Agreement, or after the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Leased Premises, the City may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, proceeding, suit, action, order or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation and/or Operator's liability hereunder.

### **Section 26.2 NO WAIVER OF BREACH.**

The failure of the City to insist in any one or more instances, upon a strict performance of any of the covenants of this Lease Agreement, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by the City of any sum (including Ground Rent, CFCs, Contingent Fee and Reimbursable City Costs) or charge otherwise payable by Operator, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the City of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the City. The consent or approval of the City to or of any act by Operator requiring the City's consent or approval shall not be deemed to waive or render unnecessary the City's consent or approval to or of any subsequent similar acts by Operator.

### **Section 26.3 NO WAIVER OF RENT.**

The receipt by the City of any installment of the Ground Rent, Reimbursable City Costs, or other sum or charge otherwise payable by Operator shall not be a waiver of any Ground Rent, Reimbursable City Costs, or other sum or charge otherwise payable by Operator then due.

### **Section 26.4 APPLICATION OF PAYMENTS.**

The City shall have the right to apply any payments made by Operator to the satisfaction of any debt or obligation of Operator to the City, in the City's sole discretion and regardless of the instructions of Operator as to application of any such sum, whether such instructions be endorsed upon Operator's check or otherwise, unless otherwise agreed upon by both Parties in writing. The acceptance by the City of a check or checks drawn by others than Operator shall in no way affect Operator's liability hereunder nor shall it be deemed an approval of any assignment of this Lease Agreement or subletting by Operator.

**Section 26.5 CITY'S RIGHT TO PERFORM.**

Upon Operator's failure to perform any obligation or make any payment required of Operator hereunder, the City shall have the right (but not the obligation) to perform such obligation of Operator on behalf of Operator and/or to make payment on behalf of Operator to such parties, following applicable notice and cure period. Operator shall reimburse the City the reasonable cost of the City's performing such obligation on Operator's behalf, including reimbursement of any amounts that may be expended by the City, plus interest.

END OF ARTICLE

## ARTICLE 27 ASSIGNMENT AND SUBLET

### Section 27.1 ASSIGNMENT.

Operator shall not transfer or assign this Lease Agreement or Operator's interest in or to the Leased Premises, or any part thereof, without having first obtained City's prior written consent, which may be given only by or pursuant to an ordinance enacted by the City Council of the City of San Antonio, Texas. Operator shall not transfer or assign this Lease Agreement to any Person that is not a Family or Brand listed in **Section 10.1.2.**, as amended from time to time. Notwithstanding the foregoing, Operator may assign this Lease Agreement to a parent, Subsidiary, Affiliate entity or newly-created entity resulting from a merger, acquisition or other corporate restructure or reorganization of Operator, or to any entity owned or controlled, or under common control, directly or indirectly by Operator, without the written consent of City, although written notice to City of any such assignment shall be provided by Operator. Also notwithstanding the foregoing, Brands authorized under this Lease Agreement may be assigned between Operators with the Aviation Director's consent. Also notwithstanding the foregoing and for so long as any pledge or collateral assignment of Operator's interest in the Lease Agreement shall be by instrument substantially in such form as shall have previously been approved by the City Council, the consent of City to such pledge or collateral assignment may be given by City acting by and through the Aviation Director. For purposes of any assignment, City shall have the right to renegotiate rental rates and all other terms of this Lease Agreement.

### Section 27.2 SUBLET.

Operator shall not sublet the Leased Premises or any part thereof without having first obtained the Aviation Director's written consent, not to be unreasonably withheld. In the event Operator requests permission to sublease, the request shall be submitted to the Aviation Director, prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease(s) and of all agreement(s) collateral thereto. Notwithstanding the foregoing, Operator shall not sublet this Lease Agreement to any Person that is not a Family or Brand listed in **Section 10.1.2.**, as amended from time to time. The identity of the sub-operator, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history and all other information requested by the Aviation Director shall be specified. Operator shall not sublease a total of more than fifty percent (50%) of the Leased Premises and/or or its component building and Ground Space. If such limit is exceeded, City shall have the right, upon thirty (30) days' written notice, to recapture the space described in the sublease, and terminate the entire Lease Agreement on the expiration of such thirty (30) day period. In the event of any recapture, Operator's rental payments shall be adjusted on a pro-rata basis; provided, however, that all rights and remedies of City contained in **Article 24, Default**, shall be available to City.

### Section 27.3 ADDITIONAL RENT.

In the event of a sublease where the rental per square foot established in the sublease exceeds the rental for same established in the Lease Agreement, Operator shall pay to City, as additional rent, the excess of the rental received from the Sub-Operator over that specified to be paid by Operator herein per square foot; provided that Operator may charge a reasonable fee for administrative costs in addition to the sublease rental, not to exceed fifteen percent (15%) of the specified sublease rental. Such fifteen percent (15%) shall not be considered as excess rental. Nothing herein shall prevent Operator from charging a reasonable fee to others for the use of capital equipment and facilities on the subleased premises or charging for use of utilities and other services being paid for by Operator. Should any

method of computation of rental to be paid by a Sub-Operator, other than computation based upon a rental rate per square foot, be employed, the provisions of this paragraph will apply if the rental received for the proportionate area of the Leased Premises by Operator exceeds the rental paid to City for said proportionate area of the Leased Premises.

**Section 27.4 PARTIES BOUND.**

Each transfer, assignment or subletting to which there has been consent shall be by written instrument, in a form satisfactory to City, and shall be executed by the transferee, assignee or sub-operator, who shall agree, in writing, for the benefit of City, to be bound by and to perform the terms, covenants and conditions of this Lease Agreement. Four (4) executed copies of such written instrument shall be delivered to City. Failure either to obtain City's prior written consent or to comply with the provisions herein contained shall operate to prevent any such transfer, assignment or subletting from becoming effective.

**Section 27.5 OPERATOR'S LIABILITY.**

Should the subletting of the Leased Premises be approved by City, Operator agrees and acknowledges that it shall remain fully and primarily liable under this Lease Agreement, notwithstanding any such sublease and that any such sub-operator shall be required to attorn to City hereunder.

**Section 27.6 NON WAIVER RESPONSIBILITIES.**

The receipt by the City of rent from an assignee, subtenant or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Operator from further observance or performance by Operator of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the City, unless such waiver be in writing, signed by the Aviation Director.

END OF ARTICLE

## ARTICLE 28 NONDISCRIMINATION

### **Section 28.1 NON-DISCRIMINATION POLICY.**

As a party to this Lease Agreement, Operator understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

### **Section 28.2 AFFIRMATIVE ACTION PROGRAM.**

Operator assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, color, creed, sex, age, religion, national origin or handicap, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by said Subpart. Operator assures that it will require that its covered sub-organizations provide assurances to Operator that they will require assurances from their sub-organizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

### **Section 28.3 OPERATOR BOUND.**

Operator agrees to bind contractually all its sub-organizations and sub-operators to all the foregoing terms and conditions.

END OF ARTICLE



## **ARTICLE 29 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (“ACDBE”)**

### **Section 29.1 ACDBE PROGRAM COMPLIANCE.**

To the extent applicable to this Lease Agreement, Operator shall comply with all requirements of the City’s ACDBE Program strictly in accordance with the terms of **Section 10** of the Concession Agreement.

## ARTICLE 30 NOTICES

### Section 30.1 METHOD FOR NOTICE.

All notices required under this Lease Agreement shall be in writing and shall be delivered either: (i) personally, (ii) by certified or registered mail, (iii) by recognized overnight courier, or (iv) by facsimile. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iii) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient,

### Section 30.2 ADDRESS FOR NOTICE.

All notices required under this Lease Agreement to the City shall be addressed as follows:

City Clerk \_\_\_\_\_  
P.O. Box 839966 \_\_\_\_\_  
San Antonio, Texas 78283-3966 \_\_\_\_\_

And

Aviation Director \_\_\_\_\_  
City of San Antonio \_\_\_\_\_  
Department of Aviation \_\_\_\_\_  
9800 Airport Boulevard \_\_\_\_\_  
San Antonio, Texas 78216 \_\_\_\_\_

All notices required under this Lease Agreement to the Operator shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Telecopier: (\_\_\_\_) \_\_\_\_\_

Notices may also be to such other respective addresses as either party hereto may hereafter from time to time designate in the manner for notice required under this Lease Agreement.

END OF ARTICLE

## ARTICLE 31 GENERAL PROVISIONS

### Section 31.1 COMPLIANCE WITH LAWS.

In addition to, and not in lieu of, any more specific directive in this Lease Agreement, Operator shall comply with all applicable rules and regulations of the City pertaining to the Airport or other realty of which the Leased Premises are a part now in existence or hereafter promulgated for the general safety and convenience of the City, its various tenants, invitees, licensees and the general public. Operator shall further comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters.

### Section 31.2 UPDATE OF TERMS.

The City shall, without the necessity of an amendment to this Lease Agreement, have the right to periodically update those requirements set forth in the table shown in **Section 10.1.2** and **Exhibits C, D, E, F, G, I, and J**, to reflect changes in practices for similar properties or operations either at the Airport or at other Airports nationwide. Without limiting the ability of the City to do so at other times, it is expected that the City will make such updates every ten (10) years at the commencement of each Concession Term.

### Section 31.3 ONGOING IMPROVEMENTS.

It is understood that the City may from time to time elect to alter, improve or remodel portions of the Airport. Operator agrees that any temporary inconvenience resulting from any such work by the City or its contractors and agents shall not be grounds for reduction of any sum or charge otherwise payable by Operator if the same shall not unreasonably interfere with Operator's use of the Leased Premises.

### Section 31.4 ELECTRONIC FUNDS TRANSFER; AUTOMATIC DEBIT.

The Operator may remit any amounts to be remitted or otherwise payable under this Lease Agreement by check or by electronic funds transfer to an account designated by the City from time to time. The City may further, at its sole option, upon not less than sixty (60) days prior notice to those Operators choosing to use electronic funds transfer, require those Operators to promptly execute and deliver to the City any documents, instruments, authorizations, or certificates required by the City to give effect to an automated debiting/electronic funds transfer system, whereby any or all payments by those participating Operators of whatsoever nature required or contemplated by this Lease Agreement shall be electronically debited and/or electronically fund transferred monthly or from time to time, as provided in this Lease Agreement, from participating Operator's account in a bank or financial institution designated by Operator and credited to the City's bank account as the City shall designate from time to time. Participating Operator's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this **Section** ---- shall constitute a default of this Lease Agreement.

### Section 31.5 SERVICE FEE PROMPT PAYMENT.

Operator shall promptly pay all service fees and other charges connected with its use of an automated debiting system and/or electronic funds transfer system, including, without limitation, any charges resulting from insufficient funds in Operator's bank account or any charges imposed on the City.

### Section 31.6 RESPONSIBILITY FOR PAYMENTS.

Operator agrees that it shall remain responsible to the City for all payments and other charges pursuant to the Lease Agreement, even if Operator's bank account is incorrectly debited and/or electronically

transferred in any given month. Such fees and other charges shall be immediately payable to the City upon written demand.

**Section 31.7 BROKERS.**

The Operator warrants that it knows of no real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Lease Agreement. Operator shall indemnify and hold the City harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of Operator's discussions, negotiations and/or dealings with any real estate broker or agent. This Section is not intended to benefit any third parties and shall not be deemed to give any rights to brokers or finders.

**Section 31.8 LABOR DISPUTES.**

Operator agrees to use its best efforts to avoid disruption to the City, its tenants or members of the public, arising from labor disputes involving Operator, and in the event of a strike, picketing, demonstration or other labor difficulty involving Operator, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

**Section 31.9 MANDATORY PROGRAMS.**

Operator understands that, from time to time, the City may institute certain programs that the City believes, in its sole judgment, will be in the best interests of the Airport and its tenants (e.g., Airport wide recycling programs). Operator agrees to promptly comply with and carry out any and all reasonable obligations issued by the City under such programs, as the same may exist from time to time.

**Section 31.10 SUCCESSORS BOUND.**

This Lease Agreement and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the Parties hereto and their respective assignees, subject to the provisions hereof. Any successor or assignee of the Operator who accepts an assignment of the benefit of this Lease Agreement and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions thereof. Nothing herein contained shall be deemed in any manner to give a right of assignment to Operator without the prior written consent of the City.

**Section 31.11 ACCESS TO LEASED PREMISES.**

The City shall have the right to show the Leased Premises at all reasonable times during business hours of Operator to any prospective operators or tenants of the same, and may at any time enter upon the Leased Premises, or any part thereof, for the purpose of ascertaining the condition of the Leased Premises or whether Operator is observing and performing the obligations assumed by it under this Lease Agreement, all without hindrance or molestation from the Operator, except that Operator shall have the right to accompany City. The City shall also have the right to enter upon the Leased Premises for the purpose of making any necessary repairs and performing any work that may be necessary by reason of Operator's failure to make any such repairs or perform any such work. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Operator (except that no notice shall be required in the event of an emergency) or an authorized employee of Operator at the Leased Premises, which notice may be given verbally.

**Section 31.12 SUBORDINATION, ATTORNMEN, AND NON-DISTURBANCE.**

Unless otherwise designated by the City, this Lease Agreement shall be subordinate to all existing or future mortgages and deeds of trust on the Leased Premises or the CONRAC, and to all extensions, renewals or replacements thereof. Within ten (10) business days of the City's request, Operator shall execute and deliver all instrument or certificates which may be necessary or appropriate to reflect such subordination. Notwithstanding the foregoing, Operator shall not be required to subordinate to future mortgages or deeds of trust unless the mortgagee or beneficiary under the deed of trust agrees that if it becomes the owner of the property, it will recognize the Lease Agreement as long as Operator is not in default. Within ten (10) business days of the City's request, Operator shall also execute and deliver to third parties designated by the City an estoppel certificate or letter in the form requested by the City or any lender the correctly recites the facts with respect to the existence, terms and status of this Lease Agreement. Operator agrees to attorn to any successor to the City following any foreclosure, sale or transfer in lieu thereof. So long as Operator is not in Default hereunder beyond the applicable grace or cure period, its tenancy will not be disturbed, not its rights under this Lease Agreement, be affected by any default under such ground lease or deed of trust or mortgage nor will Operator, to the extent allowed by applicable law, be named as a defendant in any foreclosure proceedings.

**Section 31.13 TIME OF THE ESSENCE.**

Time is of the essence of each and every one of the Operator's obligations, responsibilities and covenants under this Lease Agreement.

**Section 31.14 ATTORNEYS' FEES.**

In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease Agreement or in the event suit is brought for the recovery of any Ground Rent, or other sum or charge otherwise payable by Operator this Lease Agreement or the breach of any covenant or condition of this Lease Agreement, or for the restitution of the Leased Premises to the City and/or eviction of Operator during the Lease Term, or after the expiration thereof, the prevailing party will be entitled to reasonable attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal. For purposes of calculating attorneys' fees, legal services rendered on behalf of the City by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in San Antonio, Texas.

**Section 31.15 LIABILITY FOR OPERATOR DEFAULT.**

In the event Operator defaults under this Lease Agreement, by failing to pay the full aggregate amount of Ground Rent due hereunder or thereunder, Contingent Fees, and all other obligations of the defaulting Operator with the exception of previously owed CFCs (for purposes of this Section 31.15 only, "**Lease Obligations**"), the defaulting Operator shall be and remain liable for any and all Lease Obligations under its respective Lease Agreement. Notwithstanding the foregoing, the remaining Operator(s) shall be responsible for the defaulting Operator's Ground Rent, Routine Maintenance, and Contingent Fees commencing from the date of termination of the defaulting Operator by the City. The payment of such Lease Obligations by the remaining Operators shall not relieve the defaulting Operator of any of its obligations to the City, whether arising under this Lease Agreement or such other Lease Agreement, as the case may be, and in the event the City thereafter actually receives all or any portion of such unpaid Lease Obligations from the defaulting Operator which any remaining Operators have theretofore paid to the City hereunder, the City shall, as soon as reasonably practicable thereafter, provide the remaining Operator(s) with a credit against remaining Operator(s)'s obligations for Lease Obligations next coming due and payable hereunder in an amount equal to such portion of the unpaid Lease Obligations so received by the City hereunder to the extent paid by remaining Operator(s). In addition, the Exclusive Use Premises and Common Use Premises then allocated to the

terminated Operator shall be reallocated to the remaining, non-defaulting Operators in the CONRAC, on a proportional basis based upon the market share of the remaining Operators for the most immediate twelve (12) month period prior to said termination date, and otherwise generally in accordance with the manner of reallocation contemplated in **Article 11**. The Operators Member Agreement shall expressly provide for and authorize the proportional liability and the other obligations set forth hereunder.

**Section 31.16 CAPTIONS AND ARTICLE NUMBERS.**

The captions, Article and section numbers, and table of contents appearing in this Lease Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or Articles of this Lease Agreement or in any way affect this Lease Agreement.

**Section 31.17 SEVERABILITY.**

If any term, covenant, condition or provision of this Lease Agreement, or the application thereof to any Person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Lease Agreement, or the application thereof to any Person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 31.18 SURVIVAL OF INDEMNITIES.**

All indemnities provided in this Lease Agreement shall survive the expiration or any earlier termination of this Lease Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Lease Agreement, Operator shall, at the City's option, defend the City at Operator's expense by counsel satisfactory to the City.

**Section 31.19 APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY.**

This Lease Agreement is to be performed in Bexar County, Texas, and, the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of Texas. Venue for any action on or related to the terms of this Lease Agreement shall be exclusively in either Bexar County, Texas, and the Parties waive any right to assert a claim of inconvenient forum.

**Section 31.20 SUBMISSION OF AGREEMENT.**

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Leased Premises. This document shall become effective and binding only upon execution and delivery hereof by the City and Operator. No act or omission of any officer, employee or agent of the City or Operator shall alter, change or modify any of the provisions hereof.

**Section 31.21 ENTIRE AGREEMENT; MODIFICATION.**

This Lease Agreement, together with the Concession Agreement, sets forth all covenants, promises, agreements, conditions and understandings between the City and Operator concerning the Leased Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the City and Operator other than as are herein set forth. No subsequent alteration, amendment, change or addition to the Lease Agreement shall be binding upon the City or Operator unless reduced to writing and signed by the City and Operator. The Aviation Director is authorized to execute amendments which do not substantially alter the material terms of this Concession Agreement.

**Section 31.22 RELATIONSHIP OF CITY AND OPERATOR.**

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Lease Agreement nor

shall any acts of Operator and the City be deemed to create any relationship other than that of Operator and the City. Operator is not an employee or agent of the City by reason of this Lease Agreement, or otherwise. Operator shall be solely responsible for its acts and omissions arising from or related to its operations or activities at the Airport, or lease of property herein.

**Section 31.23 EXHIBITS.**

**Exhibits A through J** are attached to this Lease Agreement after the signatures and by this reference incorporated herein.

**Section 31.24 CONFORMANCE WITH LAWS AND REGULATIONS.**

Operator agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to those prescribed by the any City ordinances, including the City Code thereof; any ordinances, rules and codes of the City; and any applicable laws of the State of Texas and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Operator shall have the sole and exclusive obligation and responsibility to comply with the requirements of the City's Code and the Americans With Disabilities Act of 1990, including but not limited to regulations promulgated thereunder, and the City shall have no such obligations or responsibilities as to the Leased Premises.

**Section 31.25 INTERPRETATIONS.**

All terms defined in this Lease Agreement and all pronouns used in this Lease Agreement shall, unless the context clearly requires otherwise, be deemed to apply equally to singular and plural and to all genders. The term "or" is specifically used in its logical sense and, as such, is satisfied whenever one or more of its operands are true.

**Section 31.26 TABLE OF CONTENTS AND HEADINGS.**

The table of contents, titles and headings of the Articles and sections of this Lease Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof.

**Section 31.27 LIBERAL CONSTRUCTION AND AMBIGUITIES.**

This Lease Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and, to provide for the full and timely payment of all Bonds from time to time hereafter issued by the City, which Bonds may be secured by a pledge of the CFC(s) for which Operator has an obligation to collect and remit under this Lease Agreement and Contingent Fee which Operator has an obligation to pay under this Lease Agreement. In the event of any ambiguity contained herein, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

**Section 31.28 FEDERAL AVIATION ADMINISTRATION REGULATIONS AND REQUIREMENTS.**

(a) The City reserves the right to further develop or improve the landing area of San Antonio International Airport as it sees fit, regardless of the desires or view of Operator and without interference or hindrance.

(b) The City reserves the right, but shall not be obligated to Operator to maintain and keep in

repair the landing area of San Antonio International Airport and all publicly owned facilities of said airport, together with the right to direct and control all activities of the Operator in this regard.

- (c) This Lease Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of San Antonio International Airport.
- (d) There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the San Antonio International Airport.
- (e) Operator agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.
- (f) Operator by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of fifty (50) feet. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the land covered by this Lease Agreement and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Operator.
- (g) Operator by accepting this Lease Agreement agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from San Antonio International Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the expense of Operator.
- (h) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of § 308a of the Federal Aviation Act of 1958 (49 U.S.C. § 1349a).

**Section 31.29 WAGES.**

Operator shall pay at least the minimum wage, as required by Federal and State statutes and City ordinances, to employees of its operations hereunder.

**Section 31.30 FORCE MAJEURE.**

If either party shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, war, terrorism, inability to procure materials, restrictive governmental laws or regulations or other cause, without fault and beyond the control of the party obligated (the financial inability of the party excepted), performance of such act shall be extended by a period equal to the period of such delay; provided, however, that nothing in this



paragraph shall excuse Operator from the prompt payment of any rental except as may be expressly provided otherwise in this Lease Agreement; and further provided that the party relying on this paragraph shall provide written notice to the other party notifying such other party of the *force majeure* event promptly after such *force majeure* event, and shall proceed with all diligence to complete the performance of the act upon the cessation of the *force majeure* event.

**Section 31.31 CONFLICT OF INTEREST.**

Operator acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, Operator warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Operator further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

**Section 31.32 AUTHORITY OF AGREEMENT.**

Operator warrants and represents that it has the right, power, and legal capacity to enter into, and perform its obligations under this Lease Agreement, and no approvals or consents of any persons are necessary in connection with it. The execution, delivery, and performance of this Lease Agreement by the undersigned Operator representatives have been duly authorized by all necessary corporate action of Operator, and this Lease Agreement constitutes a legal, valid, and binding obligation of Operator, enforceable in accordance with its terms.

**Section 31.33 AUTHORITY OF AVIATION DIRECTOR.**

The Aviation Director shall administer this Lease Agreement on behalf of City. Whenever this Lease Agreement calls for approval by City, such approval shall be evidenced, in writing, by either the Aviation Director or the City Manager of the City of San Antonio or his/her designee. In no event shall this language be considered a waiver by Operator to object to decisions by the Aviation Director which it considers to be arbitrary, capricious or inconsistent with any express obligations to act reasonably set forth herein.

**Section 31.34 NET AGREEMENT.**

It is the intent and purpose of the City and Operator that all rental payable by Operator herein shall be absolutely net to the City so that this Lease Agreement shall yield to City the entire rent specified, in each year of this Lease Agreement, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against Operator or the Leased Premises, without abatement, deduction or set-off by Operator.

**Section 31.35 NOISE CONTROL.**

Operator, for itself and each of its officers, representatives, agents, employees, guests, patrons,

contractors, subcontractors, licensees, subtenants, invitees, or suppliers shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Aviation Director shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Lease except that operations and activities having noise levels not in violation of federal, State, or local governmental standards shall not be deemed a nuisance.

**Section 31.36 VEHICULAR AND EQUIPMENT PARKING.**

Vehicular and equipment parking in areas other than the Leased Premises by Operator, its officers, representatives, agents, employees, guests, patrons, volunteers, contractors, subcontractors, licensees, suppliers or other invitees shall be restricted to such areas at Airport as are designated by the Aviation Director.

**Section 31.37 ADDITIONAL FACILITIES.**

The City may elect to construct and install additional facilities or improvements to the Facility as follows: the City may, with notice to the Operator and opportunity to comment, but without any requirement for the consent or approval of the Operator, construct and install additional facilities for any of the following reasons: (i) the additional facility is required by a Governmental Authority; (ii) the additional facility is of an emergency nature, which, if not made, would substantially impair the current safe operation of the Facility or the CONRAC; (iii) the additional facility is to repair or replace the Facility or the CONRAC as a result of damage or destruction by fire or other casualty; or (iv) the additional facility is necessary to upgrade security, safety or to make repairs, replacements or improvements to roads, walkways or equipment providing safe access to and from the Facility or the CONRAC. In the event any such additional facilities become necessary, the City shall promptly provide to the Operator notice of the need thereof, and the Operator shall have an opportunity to provide comment concerning the proposed additional facilities, but no Operator objection shall operate to limit or delay the construction or installation of such additional facilities.

**Section 31.38 CHANGE OF FACILITY USAGE.**

Should the City repurpose the use of the Facility to uses other than rental car operations while Bonds are outstanding, the City will, in its sole discretion, either refund the outstanding bonds or assume responsibility for paying debt service on the bonds with Airport funds other than CFC proceeds.

**Section 31.39 NO LIMITATION ON CITY.**

Nothing in this Lease Agreement shall be construed as a limitation on the ability of the City to issue bonds or other obligations for any legal purpose that it elects.

**Section 31.40 MOST FAVORED NATIONS.**

In the event that any Lease Agreement granted by the City to any other Rental Car Operator shall contain any terms and conditions more favorable to such Operator than the terms and conditions herein described (other than the number of allocated parking spaces and the location within the Customer Service Center), then this Lease Agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other operator. The intent of this provision is to ensure that the City shall give due diligence to ensure Operator will be able to compete on terms as equal as possible with all other Rental Car Operators and to ensure that no other Operator shall enjoy any rights or privileges more favorable to such Operator than those enjoyed by the Operator herein.

END OF ARTICLE

**ARTICLE 32 SIGNATURES**

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as of the date first above written.

\_\_\_\_\_ CITY OF SAN ANTONIO

By: \_\_\_\_\_ By: \_\_\_\_\_

City Manager

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Federal Tax Identification Number

\_\_\_\_\_  
City Attorney

**Exhibit A**  
**San Antonio International Airport**

**Exhibit B**  
**Tenant Design Manual**

**Exhibit C**  
**Project Site and Lease Site**

**Exhibit D**  
**Floor Plan Summary Sheet**

**Exhibit D-1 – Level 0 Plan**

**Exhibit D-2 – Level 1 Plan**

**Exhibit D-3 – Level 2 Plan**

**Exhibit D-4 – Mezzanine Level Plan**

**Exhibit D-5 – Level 3 Plan**

**Exhibit D-6 – Level 4 Plan**

**Exhibit D-7 – Roof Level Plan**



**Exhibit E**  
**Summary of RAC Space Allocation**

**Exhibit E-1 – Initial Allocation: Level 2 Plan**

**Exhibit E-2 – Initial Allocation: Level 3 Plan**

**Exhibit E-3 – Initial Allocation: Level 4 Plan**

**Exhibit E-4 – Initial Allocation: Roof Level Plan**

**Exhibit E-5 – Initial Allocation: CSC Lobby Plan Mezzanine Level**

**Exhibit F**  
**Illustration of Ground Rent Allocation**

**Exhibit G**  
**Preliminary Financial Plan**

**Exhibit H**  
**Form of Payment Bond for Tenant Improvements**

**Exhibit I**  
**CFC Remittance Form**

**Exhibit J**  
**Operations Manual**  
*[to be added as exhibit when complete]*