

**GROUND LEASE AGREEMENT**

**by and between**

**THE CITY OF AUSTIN DEPARTMENT OF AVIATION**

**and**

**AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.**

**a Texas Public Facility Corporation**

City Council Approval: April 20, 2017

Dated as of \_\_\_\_\_, 2017

## GROUND LEASE AGREEMENT

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

**THIS GROUND LEASE AGREEMENT** (hereinafter called this or the “Agreement”) is made and entered into as of the \_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF AUSTIN DEPARTMENT OF AVIATION (hereinafter called the “CITY” or “LESSOR”), on the one hand, being the Owner and Operator of the AUSTIN-BERGSTROM INTERNATIONAL AIRPORT (hereinafter called the “AIRPORT”), and AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC., a Texas Public Facility Corporation (hereinafter called “LESSEE”), on the other hand. The LESSOR and LESSEE are hereinafter referred to as the “Parties”.

### **WITNESSETH:**

**WHEREAS**, the City and Landmark Hospitality LP (“Landmark”) entered into a Facilities Lease Agreement dated June 4, 1998 as amended by the First Amendment dated December 9, 1998 and the Second Amendment dated November 1, 2005, (the “Facilities Lease Agreement”);

**WHEREAS**, the City and Landmark entered into a First Amendment to the Facilities Lease Agreement dated December 9, 1998 (the “First Amendment”);

**WHEREAS**, the City formed the Lessee as a nonprofit public facility corporation created and existing under Article 717, Vernon’s Annotated Texas Civil Statutes, as amended, now recodified as Chapter 303, Texas Local Government Code (the “Act”), with powers, among others, to issue revenue bonds for the purposes of developing, financing, constructing, improving, equipping, and operating a full service hotel at the Airport (the “Hotel”);

**WHEREAS**, in order to finance the construction of the Hotel, the Lessee and Chase Bank of Texas, National Association executed and delivered an Indenture of Trust dated as of February 1, 1999 (the “Original Indenture”), which Original Indenture was supplemented and amended by First Amendment to Project Development Agreement and First Supplemental Indenture dated as of July 2, 2001 (the “First Supplemental Indenture”), pursuant to which the Lessee issued its \$38,785,000 Airport Hotel Senior Revenue Bonds, Series 1999A, and its \$3,730,000 Airport Hotel Subordinate Revenue Bonds, Series 1999B (together, the “1999 Bonds”);

**WHEREAS**, Lessee issued Airport Hotel Senior Revenue Refunding and Improvement Bonds, Series 2017, in the aggregate principal amount of \$\_\_\_\_\_ to retire the 1999 Bonds;

**WHEREAS**, the Facilities Lease Agreement is terminated along with all amendments thereto, and replaced with this Agreement between the Lessee and the City, and the new Agreement will commence on the Effective Date.

**NOW THEREFORE**, the Parties agree to be bound by the following terms, conditions, and covenants:

## ARTICLE I

### DEFINITIONS AND TERMS

Section 1.1 Definitions. In and throughout this Agreement in addition to the terms defined in the preamble to this Agreement, the following words shall have the following meanings, respectively, unless the context shall clearly appear otherwise, to-wit:

- (a) “**ACT**” has the meaning as defined in the third WHEREAS clause;
- (b) “**AIRPORT**” means the Austin-Bergstrom International Airport;
- (c) “**CITY**” means the City of Austin, Texas;
- (d) “**CITY COUNCIL**” means the governing body of the City;
- (e) “**CONSTRUCTION APPLICATION**” means \_\_\_\_\_;
- (f) “**DIRECTOR**” means the Director of Aviation for the City of Austin;
- (g) “**EFFECTIVE DATE**” means the date of issuance and delivery of the Series 2017 Bonds;
- (h) “**FAA**” means the Federal Aviation Administration;
- (i) “**FISCAL YEAR**” means the City’s fiscal year, currently the twelve (12) month period commencing on October 1 of a calendar year and ending on September 30 of the succeeding calendar year as may be determined by it from time to time;
- (j) “**LEASED PREMISES**” means Building 2900 (127,373 sq. ft.), along with approximately 10.00 acres (435,600 sq. ft.) on which Building 2900 is located, all as set forth in Exhibit “A”;
- (k) “**LEASE TERMINATION**” means the date on which the Series 2017 Bonds are released and extinguished unless terminated earlier otherwise as set forth below. ;
- (l) “**LESSEE**” means Austin-Bergstrom Landhost Enterprises, Inc. and/or its permitted successor and assignee;
- (m) “**RENT**” has the meaning given to such term in Section 5.1 of the Agreement; and

(n) “**SERIES 2017 BONDS**” means the Austin-Bergstrom Landhost Enterprises, Inc. Airport Hotel Senior Revenue Refunding and Improvement Bonds, Series 2017, issued in the aggregate principal amount of \$\_\_\_\_\_.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by the CITY. The CITY makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The City Council has duly authorized the Department of Aviation to execute and deliver this Agreement;

(b) During the original Term hereof and all extensions and renewals thereof, the CITY agrees to warrant and forever defend to LESSEE the title to the Leased Premises against the claims of any and all persons whomsoever lawfully claiming or to claim the same or any part thereof, except as to such portion of the Leased Premises, if any, as shall be taken under the power of eminent domain; and

(c) The execution, delivery, and performance by the CITY of this Agreement: (i) are within the powers of the CITY; (ii) have been duly authorized by all requisite action on the part of the CITY; (iii) do not require any consent of any governmental authority not already obtained; and (iv) will not violate any governmental requirements or any indenture, agreement, or other instrument to which either the CITY is a party or by which the CITY, or any of its respective property is bound.

Section 2.2 Representations By LESSEE. The LESSEE makes the following representations as the basis for its undertakings herein contained;

(a) It is a public facility corporation created under the laws of the State of Texas; is duly authorized to do business in the State of Texas, including specifically the Act; has the power to enter into this Agreement without violating the terms of any other agreement to which it may be a party; and by proper corporate action has been duly authorized to execute and deliver this Agreement; and

(b) LESSEE will occupy and possess the Leased Premises itself or through its operators, assignees, sublessees, sub-sublessee, subsidiaries or concessionaires, in accordance with the provisions of Section 4.3 hereof, on behalf of the CITY, for the public purposes of the AIRPORT and for the temporary or overnight use of the traveling public and for general public accommodations, upon and subject to the control and jurisdiction of the CITY in accordance with the terms hereof.

## ARTICLE III

### PREMISES AND PRIVILEGES

#### Section 3.1 Premises and Privileges.

(a) For and in consideration of the terms, conditions and covenants of this Agreement to be performed by LESSEE, all of which LESSEE accepts, CITY hereby leases to LESSEE and LESSEE hereby takes from CITY the Leased Premises and certain non-exclusive attendant privileges, uses and rights, as hereinafter specifically set forth.

Section 3.2 General Guidelines. Notwithstanding anything herein contained that may be or appear to be to the contrary, it is expressly understood and agreed that except for the right to occupy and use the Leased Premises, the rights granted LESSEE in this Agreement as such rights relate to any landing area or aviation facility, within the meaning or contemplation of such terms and rights as referred to in Section 308(a) of the Federal Aviation Act of 1958, Public Law 85-726, 72 Stat. 731; 49 U.S.C.A. Sec. 1349(a) as amended, or any subsequent act or regulation of the Federal Government are nonexclusive, and CITY herein reserves the right to grant similar privileges at the AIRPORT to another operator or other operators. All rights to occupy and use the Leased Premises granted hereunder are exclusive, however, and CITY shall have no right to grant to any third party any right to occupy or use the Leased Premises during the Term of this Agreement or any renewal or extension thereof.

Section 3.3 LESSEE's Responsibility regarding Compliance with Laws. The Leased Premises must be within the limits of the FAA regulations governing objects affecting airspace, as set forth in 14 C.F.R. Part 77. The CITY's Director of Aviation will review all plans and specifications for any additional structure to be constructed on the Leased Premises to determine compliance with such regulations. It is LESSEE's sole responsibility to obtain and comply with all permits, licenses and authorizations as may be applicable from all governing agencies.

## ARTICLE IV

### TERM, POSSESSION, QUIET ENJOYMENT, AND INGRESS/EGRESS

Section 4.1 Term and Effective Date. The term of this agreement shall commence on the Effective Date and shall end on the Lease Termination (the "Term"). The Effective Date is the date of the issuance and delivery of Series 2017 Bonds and the release and extinguishment of the 1999 Bonds.

Section 4.2 Possession. LESSEE has possession of the Leased Premises.

Section 4.3 Quiet Enjoyment and Use. Upon and subject to the other terms and provisions hereof and unless a default shall have occurred and be continuing hereunder beyond any applicable notice and cure periods set forth herein, LESSEE shall be allowed and permitted

to have the exclusive right to occupy and use and shall have peaceful possession and quiet enjoyment of the Leased Premises in accordance with the following, to-wit:

(a) LESSEE's use and occupancy of the Leased Premises shall be solely for the following respective purposes and uses, to-wit: for all primary and incidental purposes (including the training of personnel) related to the operation, repair, upkeep and maintenance of the Leased Premises for the use of the traveling public, and the same may be used incidentally for any other lawful, reasonable and appropriate activity which is not in violation of or prohibited by the CITY's reasonably and uniformly applicable rules and regulations.

(b) CITY agrees to furnish, or cause to be furnished, to the perimeters of the boundaries of the Leased Premises all of the utilities, including electricity, water, sewage, gas, telephone, and the like, at the places where the same are now located, or at such other places as LESSEE and the CITY may agree; provided, however, such agreement shall be limited to the Leased Premises and shall not be construed as a commitment by the CITY to extend utilities for any future improvements which LESSEE may construct or propose to construct on the Leased Premises.

Section 4.4 Ingress and Egress. As to the Leased Premises hereunder, LESSEE and its officers, employees, invitees, guests, sublessees, and suppliers of materials and furnishers of services, shall have the right of ingress and egress from and between the Leased Premises and any public street or roadway outside the AIRPORT by means of the roadways leading to and from the AIRPORT and the Leased Premises, all of the same to be used in common with others having rights of passage within the AIRPORT, all without any further or additional fees or charges. The use of such roadways shall be subject to reasonable, nondiscriminatory and uniformly applicable rules and regulations of the CITY now in effect or which may hereafter be promulgated for the safe and efficient operation of the AIRPORT.

## **ARTICLE V**

### **FEES, PAYMENTS AND BONDS**

Section 5.1 Rent. During the Term hereof under Section 4.1, the LESSEE shall pay the City 5% of the gross revenues generated by guest room revenues and other Hotel-generated revenues, including but not limited to, the operations of restaurants, lounges, gift/retail shops, and any other concession, including parking concessions ("Rent").

(c) Payment of Rent. Rent described in this Section shall be paid to the City in advance, without notice, demand or set-off, on or before the first day of each month throughout the Term, and delivered to the Department of Aviation, Attention: Accounts Receivable, Austin-Bergstrom International Airport, 3600 Presidential Boulevard, Suite 411, Austin, Texas 78719. Unless otherwise directed in writing, LESSEE shall tender Rent and any other fees and charges due under this Agreement to the City by electronic means. The City shall provide electronic payment instructions upon request.

Section 5.3 Other Fees. LESSEE shall pay its proportionate share of the drainage fees, and any other fees related to its occupancy at the AIRPORT, even if levied after the inception date of this Agreement.

Section 5.4 Delinquencies. The CITY, at its option, in addition to any remedy available to it hereunder in the event of a default because of nonpayment of Rent or any other fee or charge under this Agreement may levy a late payment penalty against LESSEE for all late payments. The penalty will be calculated based on one and one-half percent (1.5%) per month or the highest amount permitted by law per month on the amount outstanding for more than thirty (30) days from the payment due date, with a minimum penalty of fifty dollars (\$50.00).

Section 5.5 Upgrade of Leased Premises. A portion of the proceeds of the Series 2017 Bonds will be set aside to ensure the required improvements and upgrades proposed by the Lessee are made to the Leased Premises in order to comply with requests of Hilton (and/or any other brand name franchisee that has an executed franchise agreement with the LESSEE) in order to meet the upgrade and maintenance requested of the franchisor.

## **ARTICLE VI**

### **OPERATION AND MAINTENANCE INSURANCE AND INDEMNITY**

#### **Section 6.1 Premises, Care, Maintenance and Repairs of Leased Premises.**

(a) LESSEE shall keep the Leased Premises in a clean and orderly condition and appearance, and all of LESSEE's and the CITY's furnishings, fixtures, equipment and personal property which are located in or upon any part of the Leased Premises, and further LESSEE shall establish and maintain an adequate account for such purposes.

(b) Subject to the provisions of Section 6.6 hereof, LESSEE shall paint, repair, replace or rebuild all or any part of the Leased Premises, interior or exterior, structural or non-structural, which may be damaged or destroyed. LESSEE shall apply available insurance proceeds to such purposes as contemplated by Section 6.5 and Section 6.6 hereof.

(c) Additionally, LESSEE shall:

(i) take good care of the Leased Premises; shall maintain the same at all times in first-class ("like new") condition; shall make all repairs and replacements inside and outside, structural or otherwise, which repairs and replacements by LESSEE shall be in quality not inferior to the original material and workmanship; and shall pay promptly the costs and expenses of such repairs, replacements and maintenance, as provided in Section 6.1 hereof; and

(ii) LESSEE shall maintain and repair heating, ventilating and air conditioning facilities serving the Leased Premises and all utility service lines located upon the Leased

Premises to the extent used by LESSEE, except to the extent that such maintenance or repair is the obligation of the CITY or the utility company providing such utility service.

(d) In the event LESSEE fails to maintain, clean, repair, replace, rebuild, or paint, or fails diligently to continue to complete the repair, replacement, rebuilding or painting of all the applicable portions of the Leased Premises required to be repaired, replaced, rebuilt or painted by LESSEE under the terms of this Agreement, the CITY, at its option, and in addition to any other remedies which may be available to it, may repair, replace, rebuild, or paint all or any part thereof, and the resulting cost thereof shall be paid or repaid by LESSEE upon demand. The CITY agrees, however, not to act pursuant to this Section 6.1(d) without first giving LESSEE ten (10) days' prior written notice of default and, if LESSEE shall cure the specified default during such period, the CITY shall not exercise any right or remedy if the cure of LESSEE's default requires action of a continuing nature, or shall reasonably require a period of time to complete commencement of the cure of such default within the notice period and the continued exercise of due diligence in effecting such cure shall be sufficient.

(e) LESSEE shall store its garbage, debris and other waste materials in a clean and sanitary manner in trash receptacles at the Leased Premises, adequate to meet the reasonable needs of LESSEE and LESSEE's operator, assignees, subsidiaries, concessionaires, sublessees, and sub-sublessees, the size of which shall be at the discretion of the LESSEE and the location of which shall be at the mutual agreement of the Parties.

(f) LESSEE shall maintain all landscaping on the Leased Premises required by the CITY's Land Development Code and Department of Aviation landscaping requirements.

Section 6.2 Services to AIRPORT Users Discrimination. Without limiting the generality of any of the provisions of this Agreement, LESSEE, in its operations at the AIRPORT, and also as a part of the consideration hereof shall maintain and operate the Leased Premises and provide its services in compliance with and pursuant to Title 49, Part 21, Code of Federal Regulations, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; and shall not on the grounds of race, creed, color, or national origin discriminate or permit discrimination against any person or group of persons in any manner whatsoever.

### Section 6.3 Governmental Requirements.

(a) LESSEE shall comply with any applicable FAA regulations, as the same may be amended from time to time, and any other present or future laws, rules, regulations, orders or directions of the United States of America, or the State of Texas, which from time to time may be applicable to the LESSEE's operations hereunder.

(b) LESSEE shall procure or require its subsidiaries, assignees, sublessees, sub-sublessees, and concessionaires to procure, from all governmental authorities having jurisdiction of the operations of the LESSEE hereunder, all licenses, franchises, certificates, permits, or other authorization which may be necessary for the conduct of such operations, and it shall comply,



and shall require its subsidiaries, assignees, sublessees, sub-sublessees, and concessionaires to comply, with all laws and lawful ordinances, and governmental rules, regulations and orders during the Term of this Agreement which from time to time may be applicable to LESSEE's operations hereunder. The CITY agrees to cooperate with LESSEE and its operators, sublessees, sub-sublessees, assigns, subsidiaries, and concessionaires in obtaining the foregoing licenses, permits, franchises, certificates and other authorizations, at the cost and expense of the party requiring same, and shall join in any of the foregoing, if necessary, so long as such joinder is without cost or expense to the CITY.

(c) LESSEE covenants and agrees to observe and obey (and to require its officers and employees to observe and obey and reasonably to exercise its best efforts to require guests and invitees and those doing business with it to observe and obey) the reasonable, nondiscriminatory and uniformly applicable rules and regulations of the CITY (including amendments and supplements thereto) governing the conduct and operations of LESSEE and others on the Leased Premises, and such future reasonable, nondiscriminatory and uniformly applicable rules and regulations as may from time to time during the Term hereof, be promulgated by the CITY for reasons of safety, health, sanitation and good order; provided that any such rules and regulations shall not be inconsistent with the provisions of this Agreement or with the rules and regulations of the FAA or of any other regulatory authority having jurisdiction. The obligation of LESSEE reasonably to exercise its best efforts to require such observance on the part of its guests, invitees and business visitors shall apply only while such persons are on the Leased Premises.

(d) Nothing in this Section 6.3 shall be construed to deny LESSEE its right to contest the application or validity of any such law, rule, regulation, order or direction or any taxes or assessments described in Section 6.10 hereof and nothing in this Section 6.3 shall be construed to deny LESSEE its right to contest the application amount or validity of any proposed or assessed taxes required to be paid pursuant to Section 6.10; provided, however, that LESSEE shall not be entitled to defer payment of Rent during the pendency of any such contest. During the continuance of such contest, the CITY may not assert any claim against LESSEE for breach of this Agreement until such noncompliance would permit the Leased Premises or any interest therein to be seized or sold by any governmental authority as a result of such noncompliance.

#### Section 6.4 Prohibited Acts.

(a) LESSEE shall commit no nuisances on the Leased Premises, and shall not do or permit to be done anything which may result in the creation or commission or maintenance of a nuisance thereon.

(b) LESSEE shall not take or omit to take any action which might cause a lien or liens to become attached to the interests of the CITY, without the consent of the CITY, or suffer or permit a lien or liens for taxes to be imposed or attached thereto, unless such taxes are not then due and payable or LESSEE is contesting in good faith the tax or claim that is the basis of the lien, in which event LESSEE shall dissolve the lien or stay or prevent its foreclosure, by bond or other appropriate legal procedure.

Section 6.5     Insurance Relating to the Leased Premises.

(a) Beginning on the date hereof, LESSEE as set forth below shall maintain or cause to be maintained, with respect to each said item, with responsible insurers the following kinds and the following amounts of insurance, with such variations as shall reasonably be required to conform to applicable standard or customary Texas insurance provisions, to-wit:

(i) with respect to every structure and the contents and fixtures thereof constituting part of the Leased Premises, LESSEE shall provide and maintain "All Risk of Loss" insurance on each structure and its fixtures and contents, covering direct physical loss or damage (including the cost of removal of debris) to such structure and its fixtures and contents, in such amount and of such character as, under the terms and provisions thereof will provide a recovery, in the event of the occurrence of any loss or damage from an insured cause, equal to the full amount of loss or damage on a replacement cost basis up to the amount reasonably obtainable as the maximum probable loss or damage (including the cost of removal of debris) to such structure and its fixtures and contents with a deductible not exceeding One Hundred Thousand Dollars (\$100,000) respecting any one casualty. The risks to be insured against pursuant to this Section 6.5(a)(i) are the risks against direct physical damage or loss from fire and extended coverage-perils to the extent such coverage is reasonably obtainable and which is customarily obtained for similar facilities at other major airports;

(ii) with respect to the furnishings, trade fixtures, equipment, contents, and personal property used in operating and maintaining the Leased Premises, the LESSEE shall provide and maintain "All Risk of Physical Loss" insurance covering direct physical loss or damage in such amount and such character as, under the term and provisions thereof, will provide a recovery, in the event of the occurrence of any loss or damage from an insured cause, equal to the full amount of loss or damage on a replacement cost basis up to the amount reasonably obtainable as the maximum probable loss or damage to such furnishings, fixtures, equipment, contents, and personal property of LESSEE from any such cause with a deductible not exceeding One Hundred Thousand Dollars (\$100,000) respecting any one casualty. The risks to be insured against pursuant to this Section 6.5(a)(ii) are the risks against direct physical damage or loss from fire and extended coverage perils to the extent such coverage is reasonably obtainable and which is customarily obtained for similar facilities at other major airports;

(iii) LESSEE shall carry commercial general liability to include premises liability, independent contractor's coverage, blanket contractual liability, innkeeper's liability, liquor liability, and product and completed operations coverage. LESSEE shall carry commercial automobile liability insurance including coverage for owned, non-owned, and leased automobiles and other liability insurance of such character and amount as shall be reasonably adequate to insure the CITY and LESSEE against risks to which the CITY and/or LESSEE may reasonably be or become subject in the operation, construction or reconstruction of the Leased Premises, as approved or reasonably required by the CITY, but LESSEE shall not be required to maintain any such insurance to the extent that such insurance is carried for its benefit by any licensee or other person operating, occupying or using any part of the Leased Premises or by contractors. Such insurance shall provide coverage of not less than Five Million Dollars (\$5,000,000) for injury to or death of a person or persons in any one occurrence and for damage

to property in any one accident, with a deductible for each occurrence or accident in a reasonable amount at LESSEE's option; and

(iv) LESSEE shall carry such workers' compensation or employer's liability insurance as may be customarily carried or required by law and such other insurance as is customarily carried by others engaged in the operation and maintenance of facilities similar to the Leased Premises. The policy shall provide a waiver of subrogation in favor of both the CITY and the LESSEE

(b) All policies evidencing insurance maintained or caused to be maintained by LESSEE with respect to the Leased Premises, as set out in this Section 6.5, shall be issued by the home office of the insurer(s) or by a duly authorized agent of the insurer(s). Property policies shall name the CITY and LESSEE as loss payees, , as their respective interests shall appear, and shall be payable to the CITY and LESSEE as set forth in this Section 6.5. General Liability and Automobile liability policies shall name the CITY and LESSEE as additional insureds. All such policies shall be deposited with LESSEE, but subject to inspection, examination, and approval by the CITY. All proceeds from claims against LESSEE's insurer shall be paid as provided herein. The CITY shall have the right and is hereby authorized in its own name to demand and sue, collect and receipt for claims and moneys hereunder if LESSEE fails to do so. The net proceeds of any and all such insurance required by Sections 6.5(a)(i) and (a)(ii) shall be applied as prescribed in Section 6.6.

#### Section 6.6 Damage; Destruction; Disposition of Insurance Proceeds.

(a) In the event the Leased Premises or any part or parts thereof are damaged or destroyed by an insured casualty, the following provisions shall be applicable:

(i) If the casualty occurs prior to the payment in full of all Rent accrued and to accrue hereunder until \_\_\_\_\_, 20\_\_, and either (A) the insurance proceeds are sufficient to pay all of the Rent payments accrued and to accrue from the date of such casualty until \_\_\_\_\_ and LESSEE does not request that the Leased Premises be repaired or rebuilt, or (B) the proceeds are insufficient to pay all of the Rent payments accrued and to accrue from the date of such casualty until \_\_\_\_\_ and LESSEE agrees to pay any deficiency, and LESSEE requests that the Leased Premises not be repaired or rebuilt, then this Agreement shall terminate as of the date the Rent is so paid. LESSEE shall be fully discharged and released from all unaccrued obligations hereunder upon payment to the CITY of the insurance proceeds up to the amount required to prepay, as provided in Section 6.6, the unpaid installments of the Rent payments accrued and to accrue from the date of such casualty until Lease Termination, together with LESSEE's payments of any deficiency thereof. If the said proceeds and funds are in excess of the amount then necessary to pay the Rent payments described in the preceding sentence, any such excess shall be divided between the CITY and LESSEE in the proportions that their respective interests in the Leased Premises bear to each other determined as follows (hereinafter called the "Casualty Distribution Formula").

(b) The interest of the CITY shall be based on the value of the CITY's interest in the Leased Premises, subject to this Agreement, taking into account for all purposes in making such

evaluation the existence of the leasehold estate created by this Agreement and the amount of Rent provided to be paid by LESSEE, taking into consideration the useful life of the Leased Premises.

(i) The interest of LESSEE shall be based upon the value of LESSEE's interest in the Leased Premises for the full Term of this Agreement, including all options to extend and/or renew, whether or not then exercised, taking into consideration the useful life of the Leased Premises, and in determining the allocation of the "useful life" of the Leased Premises, that portion of such useful life for the remaining Term of this Agreement as of the date of the casualty in question, including all options to extend and/or renew, whether or not then exercised, shall be deemed to belong to LESSEE and CITY shall be entitled to the balance thereof.

(ii) If the casualty occurs prior to the payment in full of all Rent accrued and to accrue hereunder until Lease Termination and LESSEE requests that the Leased Premises be repaired or rebuilt, such Leased Premises shall be repaired or rebuilt and paid for with the insurance proceeds, and if such proceeds are insufficient for such purposes the LESSEE shall pay the deficiency. If such proceeds from policies required by Section 6.5 above are in excess of the amount necessary for such purposes, any such excess shall be paid to the CITY and deposited by it in an interest-bearing sinking fund for the payment of said remaining Rent as a credit against the next due payments of Rent, with such credit to continue until the amount thereof is exhausted and any amounts held in the sinking fund after payment of any past and future Rent shall be refunded to LESSEE. Any amount clearly not required for the payment of Rent as it accrues shall not be deposited in the sinking fund but shall be paid to LESSEE. In the event of dispute between LESSEE and the CITY, the determination of whether any such excess amount is clearly not required for the payment of the Rent shall be made by an independent, certified public accountant, jointly appointed by the CITY and LESSEE. The repair or restoration of the Leased Premises shall be in substantial accordance with the original plans and specifications, together with alterations or modifications made or agreed upon prior to the casualty, or in accordance with new or modified plans and specifications, the alternative to be determined by the LESSEE, provided no such modification or change shall be made which may alter the nature of the Leased Premises the result of which would be to cause the Series 2017 Bonds not to be obligations described in Section 103 of the Code.

(iii) If the casualty occurs on or after the payment in full of all Rent accrued and to accrue hereunder through Lease Termination and whether or not it is an insured casualty, LESSEE shall have the right to determine whether or not the Leased Premises should be reconstructed or repaired. If LESSEE elects not to reconstruct or repair the Leased Premises or the insurance proceeds are insufficient for such purposes and the LESSEE fails to agree to pay the deficiency, the insurance proceeds shall be divided between LESSEE and the CITY in the proportions that their respective interests in the Leased Premises bear to each other, determined in accordance with the Casualty Distribution Formula, as hereinabove set forth, and this Agreement and all unaccrued obligations hereunder shall thereupon be terminated. If LESSEE elects to reconstruct or repair the Leased Premises and if the insurance proceeds are sufficient to reconstruct or repair the Leased Premises or if the insurance proceeds are insufficient and LESSEE agrees to bear and pay the deficiency, the insurance proceeds and the amount paid by

LESSEE shall be applied to the repair or restoration of such Leased Premises, in substantial accordance with the plans, together with any alterations or modifications made or agreed upon prior to the casualty, or in accordance with new or modified plans and specifications, the alternative to be determined by the LESSEE. If such proceeds are in excess of the amount necessary for such repair or restoration, such excess shall be paid to and retained by LESSEE.

(c) Before any reconstruction or repair under Section 6.6, LESSEE shall submit a Construction Application and plans and specifications to the CITY for approval and construction shall be substantially in accordance therewith subject to such changes as may be reasonably requested by LESSEE and approved by the CITY; the CITY reserves the right specifically to approve the contractor and/or the architect/engineer selected by LESSEE for such reconstruction or repair work, which approval shall not be unreasonably withheld or delayed.

(d) LESSEE shall notify the CITY in writing within ninety (90) days of the occurrence of any casualty affecting the Leased Premises of the election LESSEE intends to make with respect to repair of damage or destruction caused by such casualty and the failure to give such notice shall be deemed to be an election by LESSEE to repair and restore the Leased Premises.

#### Section 6.7 Miscellaneous Insurance Covenants.

(a) LESSEE shall, no later than the first day of January in each year during the Term hereof, execute and file, or cause to be filed, with the CITY a certificate stating in reasonable detail the insurance with respect to the Leased Premises then in effect pursuant to the requirements of Section 6.5 hereof or otherwise, and with respect to each policy the name of the insurer, the amount, policy number, premium, expiration date, and hazards covered thereby, and that the premium thereof has been paid; and whether LESSEE is then maintaining or causing to be maintained insurance conforming in all respects with the requirements of Section 6.5 hereof.

(b) Any appraisal or adjustment of any loss, claim or damage under any policy of insurance with respect to the Leased Premises, and any settlement or payment of proceeds under any such policy which may be agreed upon between LESSEE and any insurer, shall be evidenced by a certificate of LESSEE filed with the CITY, approving such appraisal, adjustment, settlement or payment as required and satisfactory in the interests of the CITY and LESSEE.

(c) LESSEE's obligation under Section 6.5 shall not affect its right to carry additional insurance solely for its own account. Such additional insurance will not be subject to the requirements of Section 6.6.

(d) In the event LESSEE fails to maintain or cause to be maintained the full insurance coverage required by this Agreement, the CITY may (but shall be under no obligation to), after ten (10) days prior written notice to LESSEE, obtain the required insurance coverage and pay the premiums for the same; and all amounts so advanced therefor by the CITY shall become an additional obligation of LESSEE to the CITY, which amounts, together with interest thereon at the rate of 10% per annum from the date of payment thereof, LESSEE agrees to pay upon demand.

(e) Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the Term of this Agreement or any extension or renewal thereof for any and all loss of, or damage to, any of its property which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the parties hereto. All policies covering real or personal property which either party obtains for the Leased Premises shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss, if same are obtainable.

(f) Each insurance policy required to be maintained by LESSEE hereunder shall contain the undertaking by the carrier to notify the CITY in writing thirty (30) days prior to any cancellation of coverage or material change in coverage.

Section 6.8 Indemnification. LESSEE covenants and agrees from and after the date hereof, to the extent permitted by the laws of the State of Texas, to indemnify and hold harmless the CITY, its councilmembers, officers, agents and employees, from and against any and all claims for damage or injuries, including death, to persons or property arising out of or incident to the use and occupancy of the Leased Premises during the Term of this Agreement by LESSEE, its agents, servants or employees; provided, however, that the CITY shall give to LESSEE prompt written notice of any such claim or actions and LESSEE shall have the right to investigate, compromise and defend the same. This Section 6.8 shall not apply, however, to the negligent or willful acts or omissions of the parties indemnified hereunder or any of them, or for breach of the terms of this Agreement.

Section 6.9 Miscellaneous Operation Provisions.

(a) Without the prior written approval of the CITY, which approval shall not be unreasonably withheld or delayed, LESSEE shall not erect, maintain or display signs of advertising at or on the exterior parts of the Leased Premises or in or on the Leased Premises so as to be visible outside the Leased Premises. Exterior signs affecting public safety and security shall be in accordance with established city standards. If the CITY has not given approval, as aforesaid, upon receipt of notice by LESSEE, the LESSEE shall remove, obliterate, or paint out any and all advertising, signs, posters, and similar devices placed by the LESSEE on the Leased Premises. In the event of a failure on the part of the LESSEE so to remove, obliterate or paint out each and every sign or piece of advertising and to restore the Leased Premises to their prior condition, the CITY may perform the necessary work and the LESSEE shall pay the cost thereof to the CITY on demand.

(b) The CITY must approve the installation of obstruction lights on the Leased Premises, including the type, location and design thereof. LESSEE shall provide and maintain such obstruction lights as the CITY may reasonably direct, of the type and design approved by the CITY, and shall install such lights in the locations on the Leased Premises designated by the

CITY and shall furnish and install the bulbs and furnish the electricity necessary for the operation thereof, and shall operate the same in accordance with the directions of the CITY. The CITY will require that all obstruction lights be operated daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise (as sunset and sunrise may vary from day to day throughout each year) and for such other periods as may be directed or requested by the control tower of the AIRPORT. In addition, LESSEE shall also provide and maintain fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance or resolution of any governmental authority having jurisdiction over the AIRPORT.

(c) Except to the extent required for the performance of the obligations or the exercise of rights of the LESSEE hereunder, nothing contained in this Agreement shall grant to the LESSEE any rights whatsoever in the air space above the Leased Premises in excess of a height set forth in the plans and specifications for the Leased Premises. Notwithstanding the foregoing reservation, the CITY agrees that, unless required by the FAA or any successor agency, or otherwise reasonably deemed necessary by the CITY for the safe operation of the AIRPORT, the CITY shall not construct or erect, or permit the erection or construction of, any improvements in the airspace herein reserved or owned by the CITY above the Leased Premises.

(d) All furnishings, trade fixtures, equipment, and personal property which are installed by LESSEE in or on the Leased Premises shall be deemed to be and remain the property of LESSEE. Notwithstanding the foregoing, LESSEE shall have the right at any time during the original Term of this Agreement or any renewal or extension thereof, or at the expiration or earlier termination thereof to remove any personal property which it may have on the Leased Premises, including without limitation furniture, equipment and machinery, and provided further that LESSEE may not exercise the right of removal granted to it in this Section 6.9(d), with respect to any such property essential to the occupancy and operation of the particular building or structure involved, at any time that LESSEE is in default in the payment of any Rent due hereunder beyond the applicable grace or cure period provided herein. However, upon the expiration or earlier termination of this Agreement, the CITY shall have the right to purchase from LESSEE all or any part of such property as the CITY may designate in its notice to LESSEE described below, at a price equal to the fair market value thereof; provided, however, that this right shall not extend to any items of personal property which are embossed or marked with the LESSEE's or its operator's name, trademark, logo, trade name, or copyrighted material in such manner that removal of such material cannot be made without material change to such item. The CITY shall notify LESSEE within sixty (60) days of notification by LESSEE of such expiration or termination of its desire to exercise such right and the CITY shall be entitled to use or cause to be used such property from and after the date of such notification pending the determination of the price therefor. Any amounts due and owing the CITY by LESSEE under this Agreement shall offset and be credited against the price the CITY is required hereunder to pay for such property. In the event the CITY elects not to purchase such property, LESSEE shall at its own expense remove such property within thirty (30) days after the notification of such election by the CITY in writing to the LESSEE. If the CITY fails to deliver such notice within said thirty (30) day period, LESSEE shall not be obligated to remove or pay for the removal of any such property.

(e) All water, gas, oil, and mineral rights in and under the soil are expressly reserved by the CITY; provided, however, that the CITY shall not conduct or suffer or permit to be conducted any drilling or mining operations on the Leased Premises or any portion thereof (whether surface or subsurface).

(f) Title to all permanent improvements, including, but not limited to, buildings, structures and paved areas, shall immediately vest in the CITY as a part of the AIRPORT.

(g) LESSEE shall be permitted to and agrees to operate on the Leased Premises, a first class, full-service hotel facility offering appropriate accommodations for temporary or overnight use, functionally related and subordinate to the AIRPORT, and functionally related to the needs or convenience of and open to the general public, including the airlines using the AIRPORT, their personnel, passengers and shipping companies, including restaurants, bars, banquet, meeting and other public rooms, guest rooms, concessions and shops, parking facilities, storage and service areas, and other facilities and appurtenances necessary or desirable for the operation of such facility. In addition, the Parties hereto agree that the term "first class" as utilized herein shall mean standards of operation similar to the current and future standards of operation from time to time of any hotel facilities of age, size, construction, location, and type comparable to the Facilities and that LESSEE shall be deemed to be operating the Leased Premises in accordance with "first class" operating standards if the Leased Premises are being operated in accordance with standards similar to the current operations of any such hotels or the standards of operation of any such hotels at the time in question. LESSEE shall, subject to the terms and provisions hereof, have control of the operation of the Leased Premises without limiting the generality of the foregoing, such control by LESSEE shall include and extend to the use of the Leased Premises for all purposes customary for each respective type of facility, the charges to be made for the terms of admittance to the Leased Premises for rooms, for commercial space, for privileges for entertainment and amusement, for food and beverages, employee relations and policies, and all phases of promotion and publicity, and the right to control parking areas so as to limit their use to officers, employees, contractors, agents, suppliers of materials, furnishers of services, shippers, and business guests of the Leased Premises.

(h) LESSEE shall conduct its operations in an orderly and proper manner and so as not to unreasonably annoy, disturb or be offensive to others in the AIRPORT. LESSEE shall take all reasonable measures to eliminate vibrations tending to damage the improvements and keep the sound level of its operations as low as reasonably possible.

(i) LESSEE shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. The foregoing covenant shall not apply in the event of Force Majeure or casualty or condemnation or during any repairs or renovations to the Leased Premises.

(j) LESSEE shall not erect any structures, make any improvements, or do any other construction work on the Leased Premises, or alter, modify or make additions, improvements, or repairs to, or replacements of any structure now existing or built, or install any fixtures (other than trade fixtures, removable without injury to the Leased Premises or improvements thereof, and carpeting) without the prior written approval of the Director by a Construction Application,



provided, that no such change shall be made, which may alter the nature of the Leased Premises as facilities described in Section 103(b)(4) of the Code. Notwithstanding any other provision to the contrary, the CITY's approval shall not be required in the case of any non-structural improvement, repair, replacement, or alteration to the interior of the Leased Premises which the LESSEE may propose, so long as the Leased Premises are maintained and are operated in a customary manner for the hotel industry and so long as such improvements, repairs, replacements or alterations do not adversely affect the safe operation of the AIRPORT or prevent the Leased Premises from being operated as a public facility within the meaning of Section 103(b)(4) of the Code. In the event any construction, improvement, alteration, modification, addition, repair, or replacement requires the CITY's approval hereunder and is made without such approval, then upon reasonable notice to do so sent to LESSEE, LESSEE will remove the same or cause the same to be changed to the satisfaction of the CITY. In case of any failure on the part of LESSEE to comply with such notice, the CITY may affect the removal or change, and the LESSEE shall pay the cost thereof to the CITY on demand. The provisions of this Section 6.9(j) shall not apply to any additions, improvements, repairs or replacements reasonably necessary due to an emergency, and provided further that the structural integrity of any improvement to the Leased Premises is not affected. LESSEE is required to maintain and update, as necessary, the data base of "record documents", including drawings (in hardcopy and electronic media) and specifications, for all approved improvements made to LESSEE's facilities during Term of this Agreement or any extension thereof.

(k) Approvals of Construction Applications shall not be unreasonably withheld, and the Director shall make timely disposition of each Construction Application.

(l) LESSEE shall cause to be maintained in effect during the entire Term of the Agreement all licenses and other authorizations now or hereafter required by governmental agencies for the sale and consumption of alcoholic beverages (including beer, liquor, spirits, and wine), in those portions of the Leased Premises where sale of alcoholic beverages is permitted by law and this Agreement. The CITY shall have the right at any time on fifteen (15) days prior written notice to LESSEE to terminate the letting only as to the portion of the Leased Premises and improvements in which alcoholic beverages are permitted to be sold if the said liquor licenses or other authorization is revoked, canceled, or suspended for a continuous period of thirty (30) days, whether or not due to the fault of LESSEE, provided such revocation, cancellation or suspension has not been stayed or terminated by the end of such fifteen (15) day notice period. Any such termination shall be only as to LESSEE's right to use the Leased Premises for sale and consumption of alcoholic beverages, and shall not terminate LESSEE's right to use those portions of the Leased Premises where alcoholic beverages are sold and consumed for other purposes, e.g., the sale of food and non-alcoholic beverages in restaurants, banquet and meeting rooms and the rental of banquet and meeting rooms. Upon the exercise of such termination right under this Section 6.9(l), an equitable payment shall be made to LESSEE by the CITY from Other Revenue paid or payable in Section 5.2 on a lump sum or incremental basis to compensate LESSEE fairly for its loss of the use of the facilities which it will no longer be entitled to use for the sale and consumption of alcoholic beverages. Following any termination under this Section 6.10(1), the CITY or its designee shall have the right to use the terminated part of the Leased Premises, in part, for the sale of alcoholic beverages. Notwithstanding any terms or conditions set forth herein to the contrary, LESSEE may reapply

for such licenses in the event any such licenses are revoked or otherwise lost. If such re-application is unsuccessful, and if the CITY or its designee shall obtain such license, then the CITY or such designee shall enter into a management or other agreement with LESSEE to operate and sell liquor on behalf of the CITY or its designee, unless prohibited by law; provided that LESSEE must first reimburse the CITY and its designee for all costs and expenses incurred in obtaining such licenses. Such management or other agreement shall be on terms and conditions so that there shall be no economic change in position between the CITY and LESSEE regardless of who is the license holder, or, alternatively, LESSEE will receive the gross revenues from liquor sales and pay Other Revenue to the CITY under this Agreement as provided herein. If the CITY or its designee is prevented by applicable law from entering into such management or other agreement, then the foregoing provisions of this Section 6.9(l) shall control until LESSEE is successful in obtaining new licenses. In the event the CITY or its designee is the holder of any liquor license, the nature of the liquor service and the prices charged therefor, to the extent permitted by applicable law, will be substantially the same as and when the LESSEE was the license holder. If the CITY operates the liquor concession it shall have the right to receive all revenues generated therefrom.

(m) LESSEE shall maintain and require any subsidiaries, assignees, concessionaires, sublessees, and sub-sublessees operating under it to maintain full and adequate books of account and other records and shall require them to make the same available to an authorized representative of the CITY reflecting the result of the operations of the Leased Premises. Records and books of account more than (3) three years old need not be retained, unless LESSEE shall be otherwise notified in writing by the CITY and then only with good cause, no later than sixty (60) days before the end of the required three (3) years.

(n) LESSEE shall accord to the officers, accountants, employees, agents, and attorneys of the CITY the right to enter upon any part of the Leased Premises at all reasonable times during the term of this Agreement for the purpose of examining or making extracts from the books and records of the Leased Premises, including but not limited to cash registers and recording tapes, but the same shall be done with as little disturbance as possible and only to the extent necessary to enable the CITY to determine compliance by LESSEE with the terms of this Agreement. Notwithstanding the foregoing, the right of the CITY to conduct audits of LESSEE's books and records shall be conditioned so that the same may not be exercised more frequently than quarterly except in the case of a bona fide dispute between the Parties on matters covered by this Agreement where timely resolution requires more frequent CITY access and audit. The CITY agrees that LESSEE may audit and inspect the CITY's books and records concerning this Agreement and the operation of the AIRPORT upon written and reasonable notice, but not more frequently than quarterly except in the case of a bona fide dispute between the Parties on matters covered by this Agreement where timely resolution requires more frequent access and audit by the LESSEE.

(o) LESSEE shall install and use and cause any operator, subsidiaries, assignees, concessionaires, sublessees, and sub-sublessees operating under it to install and use such cash registers, sales slips, invoicing machines, and other equipment or devices for recording orders taken or services rendered as may be appropriate to the LESSEE's business and necessary or desirable to keep accurate record of revenue.

(p) Except where any provision set forth herein is expressly to the contrary, LESSEE shall have the complete dominion, responsibility, liability, and control over the operation, maintenance, and use of such facilities and improvements, subject to compliance by LESSEE with applicable laws and rules and regulations promulgated by the CITY governing the safe and efficient operations of the AIRPORT. The CITY agrees that, except in the exercise of its rights under this Agreement, the CITY will not take any action which would adversely impact or interfere with the use and enjoyment of the Leased Premises in accordance with this Agreement.

#### Section 6.10 Payment of Taxes.

LESSEE shall not be required to pay, discharge or remove any tax or other imposition, so long as LESSEE shall contest the amount or validity of such tax or other imposition by appropriate proceeding which shall operate to prevent or stay the collection of the tax or other imposition so contested. During such contest, the CITY shall have no right to pay the tax or other imposition contested. Upon the termination of such proceeding, LESSEE shall deliver to the CITY proof of the amount of the tax or other imposition as finally determined and payment thereof by LESSEE. LESSEE shall give the CITY written notice of any such contest and the CITY, at LESSEE's sole expense, shall join in any such proceeding if any law shall so require. Any proceeding for contesting the validity or amount of any tax or other imposition, or to recover any imposition paid by LESSEE, may be brought by LESSEE in the name of the CITY or in the name of LESSEE, or both, as LESSEE may deem advisable.

LESSEE may pay any imposition described in this Section 6.10 in installments, if payment may be so made without penalty, except that on the termination of this Agreement any such imposition which LESSEE has elected to pay in installments shall be paid in full by LESSEE prior to the expiration of the Term hereof.

#### Section 6.11 Conduct of AIRPORT Operations.

(a) The CITY agrees to operate, maintain and keep in good repair or cause to be maintained and kept in good repair, the areas and facilities provided by the CITY for the public and LESSEE in accordance with the practices of a reasonably prudent airport operator. The CITY agrees to use its best efforts reasonably necessary for the safe, convenient and proper use of the AIRPORT by those who are authorized to use the same and, in particular, to maintain and operate the AIRPORT in accordance with all applicable standards, rules and regulations of the Federal Aviation Administration and any other regulatory authority having jurisdiction.

(b) The CITY shall maintain directional signs in public areas of the AIRPORT, including by way of example, but not by way of limitation, signs indicating the location of the Leased Premises.

(c) The CITY shall keep in good repair the lighting for the public and employee vehicular parking facilities and the ramps and all other airfield lighting; and provide such janitorial and cleaning services and any other services as may be necessary to keep the public areas of the AIRPORT in a reasonably presentable and useable condition at all times.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

#### Section 7.1 Events of Default and Remedies.

(a) In the event the LESSEE fails to pay or cause to be paid the Rent when due, and such failure shall continue for a period of ten (10) days after notice thereof is given LESSEE, the CITY shall have the right, at its election, to pursue any of the remedies set forth herein, and including without limitation, termination of the Agreement.

(b) In the event of a default on the part of LESSEE in the payment of amounts due (other than the Rent) or insurance premiums, or any other moneys required to be paid by LESSEE under this Agreement, if the CITY shall deliver to LESSEE a written notice specifying such default and if the default as specified by such notice shall continue for a period of fifteen (15) days after the date of delivery of such notice, then in such event the CITY shall have the right at its election to pursue any of the remedies set forth herein.

(c) In the event of any breach of any covenant of this Agreement by LESSEE, other than as specified in (a) and (b) of this Article VII, if the CITY shall deliver to LESSEE a written notice specifying such breach and if the breach so specified by such notice shall continue for a period of thirty (30) days after the date of delivery of such notice without LESSEE having commenced to remove or cure such breach (and thereafter proceeding with reasonable diligence to completely remove or cure such breach), then in such event the CITY shall have the right at its election to pursue any of the remedies set forth herein.

(d) Upon the CITY becoming entitled to pursue its remedies against LESSEE, the CITY may exercise any remedies available to it under this Agreement; provided that if the Rent has been paid, the CITY may only terminate LESSEE's interests in this Agreement at the CITY's discretion, as the CITY's sole remedy against LESSEE; provided, however, the CITY may recover against LESSEE the amount of unpaid past due Rent as of the date of such termination. Upon the CITY's electing to terminate, this Agreement shall cease and come to an end as if the date of notice thereof to LESSEE were the day originally fixed herein for the expiration of the term hereof.

(e) No waiver by the CITY of any default or breach of any covenant, condition, or stipulation contained in this Agreement shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation in this Agreement.

(f) Neither bankruptcy, insolvency, assignment for the benefit of creditors, appointment of a receiver, nor the granting of voluntary or involuntary relief against LESSEE under applicable debtor's relief laws, from time to time in effect, shall affect this Agreement nor give the CITY the right to terminate this Agreement so long as all covenants of LESSEE are continued in performance by LESSEE or its sublessee or its LESSEE's or sublessee's successors, assigns, or legal representatives.

(g) The CITY shall not be obligated to provide LESSEE with any notices of intent to terminate this Agreement for failure to pay Rent or afford any grace periods thereof in addition to the notices and grace periods provided in (a), (b), and (c) of this Article VII. Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles the CITY to terminate LESSEE's interests in this Agreement, the CITY shall have no right to so terminate this Agreement, so long as the installments of "Rent" have been paid to date, unless, following the expiration of the period of time given LESSEE to cure such default under (a), (b) and (c) of this Article VII.

## **ARTICLE VIII**

### **TERMINATION BY LESSEE**

Section 8.1 Termination as to Rent. Except as otherwise provided in Article VIII hereof, this Agreement as to Rent is not subject to termination by LESSEE until Lease Termination.

Section 8.2 Termination as to Agreement. Subject to Section 8.1 above and upon the occurrence of or remedies afforded it hereunder, at law, or otherwise, the right to terminate this Agreement as provided below.

(a) If the AIRPORT shall be closed or its operations curtailed by more than fifty percent (50%) of its achieved operating level in terms of daily average departing and arriving flights for the twelve (12) month period next preceding, then LESSEE in its reasonable discretion may cease or curtail its operations in the Leased Premises during the period that the AIRPORT operations have ceased or have been so curtailed, and if such condition shall continue unabated for more than two (2) years, LESSEE shall have the right and option to terminate this Agreement upon thirty (30) days' prior written notice to the CITY. During the time while the Leased Premises are not being operated or are on a curtailed basis pursuant to this Section 8.2(a), there shall be a fair abatement of the Rent required by Section 5.1 hereof, or

(b) If the CITY shall fail to perform any of its obligations under this Agreement within ninety (90) days after receipt of notice of default hereunder from LESSEE (except where fulfillment of its obligation requires activity over a period of time and the CITY shall commence to perform whatever may be required for fulfillment within thirty (30) days after the receipt of notice and diligently continues such performance to completion without interruption except for causes beyond its control), then upon the occurrence of such default or at any time thereafter during the continuance of any such condition, LESSEE may, by ninety (90) days' written notice, terminate this Agreement, such termination to be effective upon the date set forth in such notice and to have the same effect as if the Term hereof has expired on that date, subject, as aforesaid, to the provisions of Section 8.1 hereof.

Section 8.3 No waiver by LESSEE of any default on the part of the CITY in the performance of any of the terms, covenants or conditions hereof to be performed, kept or

observed by the CITY shall be, or be construed to be a waiver by LESSEE of any other or subsequent default in the performance of any of said terms, covenants and conditions.

## **ARTICLE IX**

### **ASSIGNMENTS, SUBLETTING**

Section 9.1 Assignments by the CITY. The CITY may transfer or assign this Agreement to any successor in interest to the CITY to whom the AIRPORT may be sold or assigned; provided, however, that the successor in interest shall execute and deliver to the CITY, with a copy to LESSEE, an instrument assuming the obligations of the CITY under this Agreement.

Section 9.2 Assignments and Subleases by LESSEE.

(a) LESSEE shall not make any assignment of or sublease under this Agreement or enter into any concession or other agreement or arrangement whereby the Leased Premises or any part thereof are operated by any entity other than LESSEE, or an affiliate or a wholly owned subsidiary of LESSEE, without the written consent of the CITY.

(b) The City hereby approves the Hilton Corporation as the franchisor of the Leased Premises. It is understood that LESSEE or its managers or affiliates will directly operate and provide in the Leased Premises the services normally operated or provided directly by hotel operators and will not sublease, sub-sublease or grant concessions in regard of such services without the prior written consent of the CITY, which consent shall not be unreasonably withheld or delayed.

(c) If LESSEE assigns, sublets or sub-sublets its interest in this Agreement, except as hereinbefore permitted, or if the Leased Premises are occupied by anyone other than LESSEE except as hereinabove permitted during the continuance of a default by LESSEE hereunder and after the expiration of applicable notice and cure periods with respect to LESSEE, the CITY may collect Rent therefrom and the CITY shall apply the net amount collected to the Rents herein reserved, but no such collection shall be deemed a waiver by the CITY of the covenants contained herein or an acceptance by the CITY of any such assignee, sublessee, sub-sublessee, claimant, or occupant as a successor lessee, nor a release of LESSEE by the CITY from the further performance by the LESSEE of the covenants imposed upon LESSEE herein.

(d) Upon the written request of LESSEE, the CITY will enter into an appropriate agreement (herein called the "Nondisturbance Agreement") with any sublessee of space in the Leased Premises. Such Nondisturbance Agreement shall provide in substance that so long as the sublessee complies with all of the terms of its sublease, the CITY, in the exercise of any of its rights or remedies under this Agreement, shall not deprive the sublessee of possession, or the right of possession, of the property covered by the sublease during the Term thereof, or join the sublessee as a party in any action or proceeding to obtain possession of the property leased by the sublessee for any reason other than a breach by the sublessee of the terms of the sublease which would entitle the sublessor to dispossess the sublessee thereunder, provided that (i) the

sublease in question is either permitted under Section 9.2(a) hereof or, if not, the sublessee meets reasonable requirements of financial responsibility; (ii) its business is of a character consistent with those in the area of the Leased Premises and with the nature of the building and improvements forming a part of the Leased Premises; (iii) such Nondisturbance Agreement shall not cover any period beyond the Term of this Agreement; and (iv) concurrently with the execution of the Nondisturbance Agreement, the sublessee, at the request of the CITY, will agree in writing that in the event of any termination of this Agreement prior to the expiration of its term, the sublessee will attorn to the CITY and will become a lessee of the CITY under the sublessee's sublease.

## **ARTICLE X**

### **MISCELLANEOUS**

Section 10.1 Disadvantaged Business Enterprise ("DBE") Requirements. Pursuant to Department of Transportation Regulation (DOTR) 49 CFR Part 26, Appendix A, LESSEE shall comply with the requirements to meet a DBE goal established based on identified subcontracting opportunity or demonstrate a good faith effort to use certified DBE's for the construction, design, and operations of the Leased Premises. A DBE is a small business owned and controlled by socially and economically disadvantaged individuals to include SBA Section 8(a) certificate holders. Individuals who are rebuttably presumed to be socially and economically disadvantaged include Asian-Americans, African-Americans, Hispanic Americans, Native Americans and women. Projected expenditures to DBE's, under contract to perform commercially useful functions, may be counted toward the aforementioned goal. LESSEE shall submit such reports to the City of Austin Small & Minority Business Resources Department as required by CITY in the form specified by CITY for the purpose of demonstrating compliance with the provisions set forth in this paragraph.

Section 10.2 Public Accommodation Laws. LESSEE covenants that it will comply with applicable laws, regulations and building codes governing nondiscrimination in public accommodations and commercial facilities, including without limitation the requirements of the Americans with Disabilities Act and all regulations thereunder, and that the Leased Premises shall remain in compliance throughout the Term of this Agreement.

Section 10.3 Contract and Warranties. All construction, reconstruction or rebuilding pursuant to this Agreement shall be under contracts entered into under procedures established by the CITY. The CITY will cause construction contracts relating to the Leased Premises to contain provisions for performance and payment bonds and the usual and appropriate warranties for the benefit of all parties hereto. All construction warranties may be enforced by LESSEE in the name of the CITY and to the extent required will be assigned to LESSEE by the CITY.

Section 10.4 CITY's Right of Entry.

(a) The CITY, its officers, employees, contractors, engineers, and architects shall have the right at any time to enter upon the Leased Premises for the purpose of inspecting

the same, and for the doing of any act or thing which the CITY may be obligated or have the right to do under this Agreement.

(b) Without limiting the generality of the foregoing, the CITY shall have the right, for its own benefit or for the benefit of the LESSEE and the others at the AIRPORT, to maintain existing and future utilities systems or portion thereof on the Leased Premises under the surface of the ground, including therein without limitation thereto, systems for the supply of heat, water, gas, fuel and electricity, and for the furnishing of fire alarm, fire protection, sprinkler, sewage, drainage, and telephone service, including all lines, pipes, mains, wires, conduits, and equipment connected with or appurtenant thereto, and to make such repairs, replacements or alterations as may, in the opinion of the CITY, be deemed necessary or advisable and, from time to time, to construct or install under the Leased Premises new systems or parts thereof, including lines, pipes, mains, wires, conduits, and equipment; provided, however, that in exercising such right the CITY shall not interfere with the operation of the Leased Premises or abridge the rights conferred on LESSEE by the Agreement; and provided, further, that in the event the CITY or its contractor shall engage in or perform any construction work on the Leased Premises, during the Term of this Agreement, the CITY shall, to the extent permitted by the laws of the State of Texas, defend, indemnify, and hold harmless the LESSEE, its officers, agents and employees against the risk of death, injury or damage to person or property, direct or consequential, arising out of or in connection with the performance of any or all of such construction work, and does hereby assume liability and responsibility for the risk of claims and demands, just or unjust, by third parties arising or alleged to arise out of the performance of such construction work, except for damage caused by LESSEE and/or its agents, servants, contractors, or subcontractors.

Section 10.5 Telecommunication Services. LESSEE shall pay reasonable fees comparable to those levied for similar installations for its Premises Distribution System ("PDS") connections. LESSEE is required to provide a suitable telecom equipment room inside the Leased Premises for housing AIRPORT equipment required for LESSEE's connection to the PDS. The AIRPORT shall have access to this room necessary for maintenance and operation of LESSEE's connection to the PDS. LESSEE shall provide the necessary electrical power and environmental controls for the operation of LESSEE's connection to the PDS. LESSEE shall also provide the construction necessary for connection to the underground telecom utility corridor. LESSEE must provide all required telecom cabling for the PDS within the Leased Premises and to the CITY's utility corridor.

Section 10.6 Telephone Service. All telephone service charges including installation, maintenance, moves, adds, changes, long distance, and local provider service shall be LESSEE's sole responsibility. LESSEE shall not enter into any telephone agreement that conflicts with CITY's minimum point of entry ("MPOE").

Section 10.7 Data Communications Service. The PDS will carry data transmission services throughout the AIRPORT site.

Section 10.8 Television Service. CITY will provide television service via the PDS. LESSEE may not install satellite dishes, antennae or similar receiving devices on the Leased



Premises without the approval of the Director. All charges, including installation, maintenance, moves, adds, changes, PDS, and cable channel charges, shall be borne by LESSEE.

Section 10.9 Monthly Financial Reporting. The Lessee, or its designated hotel manager or agent, shall provide the City monthly reports of guest room revenues and other Hotel-generated revenues and the expenses of operation. Such reports will be sent in accordance with the notice provision of Section 10.17 of this Agreement.

Section 10.10 Services to LESSEE.

(a) Other than for the supply of potable water, which shall be furnished by the CITY and paid for by the LESSEE at a metered rate, the LESSEE shall arrange with the appropriate utility or service companies, or municipalities, or other suppliers, supplying utilities and services in the area, for the supply to the Leased Premises of all services including electric power, telephone conduits and telephone connections within the Leased Premises. LESSEE shall pay the appropriate utility service companies for the supply of such services.

(b) No failure to furnish, or no delay or interruption in, any service or services, whether such service or services shall be supplied by the CITY or by others, shall relieve or be construed to relieve the LESSEE of any of its obligations hereunder, or shall be construed to be an eviction by the CITY, or shall constitute grounds for any diminution or abatement of the Rent, GRR or Other Revenue payable under this Agreement, or grounds for any claim by the LESSEE for damages, consequential or otherwise, except when resulting from the negligence of the CITY or from its willful failure to furnish or supply such services, if any. It is provided, however, that nothing herein shall diminish or abate the requirement herein that Rent shall be paid unconditionally.

Section 10.11 Formal Approvals by LESSEE.

(a) With respect to the approvals herein required of the LESSEE, LESSEE shall from time to time furnish upon request by the CITY a certificate signed by its Secretary or an Assistant Secretary, under the seal of LESSEE, and such certificate shall set forth the partners, officers, or other representatives of LESSEE who are authorized to grant such approvals and to bind the LESSEE thereto and shall revoke all prior certificates, and the CITY and all third parties affected by any such approvals, may rely upon any writing purporting to grant such approvals signed by an officer or representative thus certified as being conclusively binding upon LESSEE, and any such writing shall itself constitute conclusive evidence that any and all corporate or partnership actions necessary to be taken with respect to the matter thus approved by such officer or representative shall be conclusively presumed to have been so taken by the LESSEE, and that the approval therein given has been authorized by the LESSEE.

Section 10.12 Personal Liability of Public Officials. In carrying out any of the above provisions of this Agreement, or in exercising any power or authority granted to him/her hereunder, there shall be no liability upon any officer of the CITY, or their authorized employees, either personally or as an official of the CITY, it being understood that in such matters he/she acts as an agent and representative of the CITY.

Section 10.13 LESSEE's Trade Names. The Leased Premises, excepting commercial space, shall be known and designated by such trade name and accompanying phraseology as may from time to time be mutually approved by the CITY and LESSEE. It is recognized, however, that the name Hilton when used alone or in conjunction with some other word or words, or in connection with the promotion of the Leased Premises, are the exclusive property of LESSEE and The Hilton Corporation. Accordingly, the CITY agrees that no right or remedy of the CITY for any default of LESSEE, on delivery of possession of the Leased Premises to CITY upon expiration or sooner termination of this Agreement, shall confer, nor shall any provision of this Agreement confer upon the CITY or any transferee, assignee or successor of the CITY, or any person, firm or corporation claiming by or through the CITY, the right to use the name "Hilton" or any other such trademark or trade name, either alone or in conjunction with other words in the use, operation or promotion of the Leased Premises. In the event of any breach of this covenant by the CITY, LESSEE and/or The Hilton Corporation shall be entitled to damages or relief by injunction, or to any other right or remedy at law or in equity and this provision shall be deemed to survive the expiration or sooner termination of this Agreement. [

Section 10.14 Force Majeure. Neither the CITY nor LESSEE shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control, and the time for performance shall be automatically extended by the period the party is prevented from performing its obligations hereunder; provided, however, that these provisions shall not apply to failures by LESSEE to pay the Rent and other charges pursuant to Article V hereof, expressly including the Rent payable thereunder.

Section 10.15 Construction of Agreement. In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

Section 10.16 Severability Clause. If any word, phrase, clause, paragraph, section, or other part of this Agreement shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Agreement and the application of such word, phrases, clause, sentence, paragraph, section, or other part of this Agreement to any other person or circumstance shall not be affected thereby.

Section 10.17 Brokerage. LESSEE and the CITY each to the other represents and warrants that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no such broker who is or may be entitled to be paid a commission in connection therewith. The LESSEE and the CITY shall indemnify and save harmless each other of and from any claim for commission or brokerage made by any such broker when such claim is based in whole or in part upon any act or omission by the other.

Section 10.18 Notices. Each provision of this Agreement, or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending,

mailing or delivery of any notice, shall be deemed to be complied with when and if the following steps are taken:

Any notice or communication required or permitted hereunder shall be given in writing, sent by (i) personal delivery, or (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail to the address as follows:

To the CITY:           City of Austin  
                              Department of Aviation  
                              3600 Presidential Boulevard, Suite 411  
  
                              Austin, Texas 78719  
                              Attention: Executive Director

To LESSEE:           Austin-Bergstrom Landhost Enterprises, Inc.  
                              3600 Presidential Boulevard, Suite 411  
                              Austin, Texas 78719  
                              Attention: President

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission, upon receipt.

Section 10.19 Consent Not Unreasonably Withheld. Wherever it is provided herein that the consent or approval of the CITY or the Director is required, such consent or approval shall not be unreasonably withheld or delayed, unless specifically otherwise provided herein. In that connection, the CITY agrees to not unreasonably withhold or delay its consent to, and to join in, the execution by LESSEE of such documents affecting the Leased Premises as may be required by (i) governmental authorities having jurisdiction over the Leased Premises and (ii) public or private utilities, in connection with the use, occupancy and operation of the Leased Premises by LESSEE, whether alone or in conjunction with adjoining property leased or controlled by LESSEE.

Section 10.20 Laws Governing. The laws of the State of Texas shall govern the construction of this Agreement.

Section 10.21 Recordation. A short form of this Agreement, for purposes of recording, will be executed by the parties which may be recorded, with all recording fees and transfer taxes to be paid by the LESSEE.

Section 10.22 No Merger. There shall be no merger of this Agreement or of the leasehold estate hereby created with the fee estate in the Leased Premises, or any part thereof by reason of the fact that the same person may acquire or bold, directly or indirectly, this Agreement

or the leasehold estate hereby created or any interest in this Agreement or in such leasehold estate as well as the fee estate in the Leased Premises or any interest in such fee estate. In the event of a voluntary or other surrender of this Agreement, or a mutual cancellation hereof, the CITY may, at its option and except as otherwise provided in Section 8.2 hereof terminate all subleases, or treat such surrender or cancellation as an assignment of such subleases.

Section 10.23 Entire Agreement. This Agreement sets forth the entire agreement between the parties regarding the lease of the Leased Premises and cancels all prior negotiations, arrangements, brochures, agreements, and understandings, if any, between the CITY and LESSEE regarding the subject matter of this Agreement. No amendment or modification of this Agreement shall be binding or valid unless expressed in writing executed by both Parties hereto.

Section 10.24 Estoppel Certificates.

(a) LESSEE agrees at any time and from time to time, upon not less than ten (10) days' prior written notice by the CITY, to execute, acknowledge and deliver, without charge, to the CITY, or to any person designated by the CITY, a statement in writing certifying that this Agreement is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that LESSEE has not received any notice of default or notice of termination of this Agreement (or if LESSEE has received such a notice, that it has been revoked, if such be the case), that to the knowledge of LESSEE no default exists hereunder (or if any such default does exist, specifying the same and stating that the same has been cured, if such be the case), that LESSEE to its knowledge has no claims or offsets against the CITY hereunder (or if LESSEE has any such claims, specifying the same), and the dates to which the Rent and the other sums and charges payable by LESSEE hereunder have been paid.

(b) The CITY agrees at any time and from time to time, upon not less than ten (10) days' prior written notice by LESSEE to execute, acknowledge and deliver, without charge, to LESSEE, or to any person designated by LESSEE, a statement in writing stating that this Agreement is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof), that no notice of default or notice of termination of this Agreement has been served on LESSEE (or if the CITY has served such notice, that the same has been revoked, if such be the case), that to the CITY's knowledge no default exists under this Agreement (or if any such default does exist, specifying the same), and the date to which the Rent and other sums and charges payable by LESSEE have been paid by LESSEE.

[Execution Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into and effective as of the date first above written, and executed in multiple counterparts on the \_\_\_\_ day of \_\_\_\_\_, 2017 by the respective officers of the parties hereunto duly authorized.

CITY OF AUSTIN

AUSTIN-BERGSTROM LANDHOST  
ENTERPRISES, INC.  
A Public Facility Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

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

**Exhibit A**