

NON-DISTURBANCE, ATTORNMENT AND CONCESSION AGREEMENT

THIS NON-DISTURBANCE, ATTORNMENT AND CONCESSION AGREEMENT, is made and entered into as of the date indicated on the City's signature page and is by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation formed under the laws of the State of Colorado ("City"), **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company ("Tenant") and DIA Tech Services, LLC a Colorado limited liability company ("Subtenant").

RECITALS:

WHEREAS, the City and Tenant entered into an Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated June 17, 1997, a Seventh Amendment to Agreement dated October 21, 2008, an Eighth Amendment to Agreement dated as of October 29, 2013, and a Ninth Amendment to Agreement dated as of April 13, 2015, (collectively, the "Tenant's Lease"), which, subject to all of the terms, conditions, covenants and provisions of the Lease, governs Tenant's rights to develop, sublease, use and permit subtenants to use portions of the mezzanine area of Concourse B at Denver International Airport (the "Lease Premises"), for retail, services and food and beverage purposes to meet the needs and requirements of the Airport and which, pursuant to the Ninth Amendment, expires May 31, 2019; and

WHEREAS, Tenant and Subtenant executed and delivered a Technical Services Sublease – Services agreement dated June 1, 2017 (the "Sublease") (attached hereto) under which, subject to Tenant's Lease, Subtenant subleased from Tenant certain premises identified as BM-3D-1 on Exhibit A-1 to the Sublease and the spaces identified on Exhibit A-2 to the Sublease ("Subtenant's Concession Space"), and has the right to occupy Subtenant's Concession Space until Tenant's Lease expires and thereafter pursuant to this Agreement; and

WHEREAS, so that Subtenant will have a reasonable period over which to attempt to recover its investment in improvements to the Subtenant Space, Subtenant is only willing to enter into the Sublease if its right to occupy the Subtenant Space described therein extends beyond May 31, 2019, the date Tenant's Lease is currently scheduled to end; and

WHEREAS, the Tenant's Lease is scheduled to end May 31, 2019 and therefore Tenant has no rights under its Lease to permit the Subtenant to occupy the Subtenant Space after May 31, 2019; and

WHEREAS, having reviewed a request by Subtenant to extend Subtenant's right to occupy the Subtenant Space beyond the expiration of Tenant's Lease (currently May 31, 2019), the City is willing to permit the Subtenant to remain in the Subtenant Space through the dates set forth in Section 5 below (the "Extended Term"), under certain conditions notwithstanding the earlier termination of the Tenant's Lease; and

WHEREAS, the City desires to grant the Subtenant, as a Concessionaire, subject to the terms and conditions set forth herein, the right to occupy, operate and manage the Subtenant Space on all the terms and conditions set forth in the Sublease, which shall be considered

modified to substitute the City for the Tenant therein through the Extended Term; and

WHEREAS, the parties desire to provide for the non-disturbance and conditional transfer of the Sublease in the event of default by the Tenant under the Lease; and

NOW THEREFORE, for and in consideration of the terms and conditions hereinafter set forth, the parties agree as follows:

1. **Quiet Enjoyment.** Except as otherwise provided in the Tenant's Lease or in the Sublease, the City agrees that so long as the Sublease is in full force and effect and not terminated and Subtenant is not in default thereunder (after giving effect to applicable notice and cure periods):

a. The City will not (unless required by law) name or join Subtenant as a party-defendant or otherwise in any suit, action or proceeding brought by the City to enforce the Tenant's Lease. The Sublease and the rights granted to Subtenant thereunder shall not be terminated or canceled or otherwise affected (except as permitted by the provisions of the Sublease) by the City's enforcement of the Tenant's Lease due to a default by the Tenant.

b. The City will not terminate its consent to the Sublease and Subtenant shall be entitled to quietly hold and enjoy the Subtenant Space for the duration of the term of the Sublease.

2. **Right to Cure.** So long as the Sublease remains in effect, if Subtenant gives Tenant any notice of default of Tenant thereunder, Subtenant agrees to give a copy of any such notice of Tenant's default to the City and the City shall have the right, but not the obligation, to cure the default of Tenant within the same period of time, if any, as is afforded to Tenant under the Sublease.

3. **Attornment.** If the City resumes possession of the Subtenant Space as a result of or in connection with a default by Tenant under the Tenant's Lease, with or without terminating the Tenant's Lease, the rights of Tenant under the Sublease shall be considered assigned to the City and the Subtenant shall be bound to the City under all of the terms, covenants and provisions of the Sublease, and in such event, Subtenant hereby agrees to attorn to the City and to recognize the City as the Tenant under the Sublease, such attornment to be self-operative and self-executing. Upon such an assignment to the City, the City shall be bound by the Sublease and the City shall assume and perform the Tenant's obligations thereunder, provided that: (i) the Sublease was approved by the CEO, (ii) at the time of such assignment, Subtenant has paid all amounts then due and payable by it and is not in default under any of the terms and conditions of the Sublease, beyond any applicable notice and cure period; (iii) the City will be entitled to receive payment of all Sublease fees accruing after the time of such assignment, whether or not Subtenant has prepaid any of such fees to Tenant; (iv) the City shall not be liable for any act or omission of the Tenant; (v) the City shall not be bound by any amendment or modification of the Sublease made without its consent; (vi) the City shall not be subject to any offsets or defenses which Subtenant might have against the Tenant; and (vii) the City shall not be liable for performance of obligations of the Tenant arising prior to such assignment of the Sublease to the City.

4. **Chief Executive Officer.** “Chief Executive Officer” or “CEO” means the Chief Executive Officer of the City’s Department of Aviation having jurisdiction over the management, operation, and control of the Airport. Whenever reference is made to the “CEO or the CEO’s authorized representative,” or words of similar import are used such reference shall mean the officer or employee of the City designed in writing by the CEO as the CEO’s delegated authorized representative

5. **Grant of Concession.** Provided that the Sublease has not been terminated as a result of a default by the Subtenant that hasn’t been cured within any applicable cure period (excluding the termination as a matter of law resulting from the termination of Tenant’s Lease currently scheduled for May 31, 2019), commencing on the day after Tenant’s Lease expires (currently June 1, 2019) and continuing to the last day of the month that ends 10 years and 6 months after the City signs and returns this Agreement to the Subtenant the City hereby grants Subtenant the right to occupy, improve and use the Subtenant Space as a Concessionaire of the City, subject to all of the terms and conditions of the Sublease, modified: (i) to change all of the obligations and rights of the Tenant thereunder to obligations and rights of the City from the day after Tenant’s Lease expires (currently June 1, 2019 and May 31, 2019, respectively), and (ii) to provide for an expiration date of the last day of the end of the month that is 10 years and 6 months after the City signs and returns this Agreement to the Subtenant. The parties to this Agreement understand and agree that from and after the day that Tenant’s Lease expired (currently, May 31, 2019), Tenant will have no rights and obligations with respect to the Sublease or the Subtenant Space under the Sublease, provided, however, that the rights and obligations arising before the effective date of any such termination shall not be affected by the provisions of this Section. As so modified, such terms and conditions are hereby incorporated by this reference as if set forth fully herein.

6. **Sublease Modifications.** At the option of the CEO, the City may require that the Subtenant agree to the following modification to the Sublease:

a. **Performance Surety.** Within thirty (30) days after the City is considered to have received an assignment of Tenant’s rights under Tenant’s Lease, Subtenant shall provide to the CEO, and maintain in effect at all times throughout the Term plus a period of six (6) months after expiration or earlier termination of the this Sublease, an irrevocable letter of credit or such other acceptable surety as first approved in writing by the City, in an amount initially equal to six (6) months of the Minimum Annual Guarantee. Such letter of credit or other surety shall be payable without condition to the City with surety acceptable to and approved by the CEO, which irrevocable letter of credit shall guarantee to the City the full and faithful performance of (i) all of the terms and provisions of this Sublease to be performed by Subtenant, as this Sublease may be amended, substituted, supplemented or extended, and (ii) all obligations and duties of Subtenant under all general rules and regulations adopted by the City or the CEO for the management, operation and control of the Airport as amended or supplemented. All irrevocable letters of credit shall be in a form, and issued by a bank, acceptable to the City. Notwithstanding the foregoing, if at any time during the term hereof, the City deems the amount of the surety insufficient to properly protect the City from loss hereunder because Subtenant is or has been in arrears with respect to such obligations or because Subtenant has, in the opinion of the City, violated other terms of this Sublease, Subtenant agrees that it will, after receipt of notice, increase

the surety to an amount required by the City; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to Subtenant's Minimum Annual Guarantees in effect under this Sublease. This Performance Surety shall be in lieu of the Security Deposit under the Sublease. Subtenant waives and releases any claims it may have against the City concerning that Security Deposit except to the extent that the City actually receives the amount of the Security Deposit from the Tenant or its successors in interest. Upon confirmation that the Subtenant has provided this Performance Surety, Tenant shall release the Security Deposit (less any appropriate deductions therefrom) to the Subtenant.

7. **Notices.** Any notices required or permitted to be given hereunder shall be in writing and delivered by a nationally recognized courier service or by U. S. certified mail, postage prepaid, return receipt requested, addressed as follows:

| | |
|-----------------|---|
| If to the City: | Chief Executive Officer Denver International Airport 8500 Pena Boulevard Denver, Colorado 80249-6340 |
| If to Tenant | Skyport Development Company, LLC 8231 East Prentice Avenue Greenwood Village, Colorado 80111 Attn: David Mosteller |
| If to Subtenant | DIA Tech Services, LLC c/o David S. Mosteller 8231 East Prentice Ave. Greenwood Village, CO 80111 |

Any party may change its address for purposes of this paragraph by written notice similarly given.

8. **Agreement made in Colorado.** This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

9. **Administrative Hearing.** Disputes arising out of this Agreement shall be resolved by administrative hearing before the CEO following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, that the City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

10. **Final Approval.** This Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council and fully executed by all signatories of the City and County of Denver, may be executed in two or more counter parts, each of which will be deemed to be an original signature page to this Agreement which may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-201735988-00

Contractor Name: Skyport Development Company LLC; DIA Tech Services, LLC

By: Skyport Development Company LLC


Name: David Morteller
(please print)

Title: Member
(please print)

ATTEST: [if required]

By: N/A

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number: PLANE-201735988-00

Contractor Name: Skyport Development Company LLC; DIA Tech Services, LLC

DIA Tech Services, LLC
By: 

Name: David Masteller
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: N/A

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



TECHNICAL SERVICES SUBLEASE

BETWEEN

SKYPORT DEVELOPMENT COMPANY, LLC

AND

DIA TECH SERVICES, LLC

**FOR B MEZZANINE CONCESSIONS AND COMMONS AREA SPACES
AT
DENVER INTERNATIONAL AIRPORT**

**TECHNICAL SERVICES SUBLEASE
DENVER INTERNATIONAL AIRPORT**

SUMMARY PAGE

DIA TECH SERVICES, LLC

This Summary Page, consisting of two pages, is attached to and made a part of that certain Sublease dated June 1, 2017, between the Skyport Development Company, LLC and the Subtenant listed below.

| | |
|------------------------|-----------------------------------|
| SUBTENANT: Name | DIA Tech Services, LLC |
| Address | 8231 East Prentice Ave. |
| City, State and Zip | Greenwood Village, Colorado 80111 |
| Contact | David S. Mosteller |
| Trade Name | DIA Tech Services |
| State of Incorporation | Colorado |

| TECHNICAL SUPPORT SPACE LOCATION and COMPENSATION (Initial) | | | | | | |
|--|----------------------------|-----------------|----------------------------|--|--|--|
| Loca. Num. | Concourse /Terminal | Address | Approx. Square Feet | Minimum Annual Guarantee <small>(or as provided in Section 5.01)</small> | Minimum Monthly Guarantee <small>(or as provided in Section 5.03A)</small> | |
| BM-3D-1* | Concourse B | Mezzanine Level | 650 Sq. Ft. | \$45,500 | \$3,791.67 | |

* Location Number BM-3D-1 is depicted on Exhibit B-1. In addition, the Subtenant's Technical Support Space shall include each of the display locations depicted on Exhibit A-2.

| | |
|---|-----------------|
| PERCENTAGE COMPENSATION % | Not Applicable. |
| SECURITY DEPOSIT: | \$3,791.67 |
| COMMONS AREA MAINTENANCE EXPENSE | None |

PROMOTIONS EXPENSE (yearly cap)

None.

PERMITTED USES:

1. Installation (to be provided by the Tenant) and operation (including repair, upkeep and including replacement if necessary using the same or similar type of equipment as previously installed) of video walls, monitors, and related cabling and monitoring equipment (consistent with commercially reasonable practices) to maintain all equipment in good working order through the entire term (including replacement if necessary using the same or similar type of equipment as previously installed).
2. Programming video walls to attract customers to the B Mezzanine by increasing awareness of and promoting offerings by B Mezzanine Subtenants.

BRAND(S) AUTHORIZED FOR USE:

DIA Tech Services

PVC major category

Not applicable.

PVC minor category

Not applicable

CONCESSION OPENING DATE:

No later than six months after the Sublease and Non Disturbance and Attornment Agreement have been fully executed and returned to Subtenant.

HOURS OF OPERATION:

Video walls to function not less than 24 hours each day, seven days per week except during periods of scheduled maintenance and temporary interruptions for unscheduled maintenance and repairs, or as provided in Section 6.16(c).

TERM:

Effective Date:

June 1, 2017

Expiration Date:

co-terminus with the scheduled expiration of Tenant's master lease (currently May 31, 2019) or as provided in Section 4.01

REQUIRED MINIMUM INVESTMENT:

There is no Required Minimum Investment. These video walls, monitors, and related cabling and monitoring equipment are to be approved by the City and installed by the Tenant pursuant to the Tenant's obligations under its master Lease.

REPLACEMENT COMPLETION DATE:

Not applicable.

REPLACEMENT MINIMUM INVESTMENT:

Not applicable.

INSURANCE POLICY AMOUNTS:

| | |
|--|---|
| Comprehensive General Liability: | \$1,000,000 |
| Automobile/Delivery Vehicle Liability: | \$1,000,000 non-airside; \$10,000,000 airside |
| Workers Compensation: | Statutory requirements |
| Alcohol Liability: | N/A |

ACDBE GOAL:

| | |
|--------------------------------------|--|
| Tenant's ACDBE Goal | 27% |
| Subtenant's Ownership Participation | 0% (if not zero, Subtenant agrees to achieve and maintain the specified percentage of participation pursuant to §§ 6.22. |
| Subtenant's Purchasing Participation | 0% (if not zero, Subtenant agrees to achieve and maintain the specified percentage of participation pursuant to §§ 6.22. |

DESCRIPTION OF EXHIBITS AND ADDENDA:

| | |
|--------------------|---|
| Exhibits A1 and A2 | Subtenant Technical Support Space Plan |
| Exhibit C | Insurance Certificate |
| Exhibit D | Form of Nondisturbance, Attornment and Concession Agreement |
| Exhibit X | Provisions for Design and Construction of Improvements |
| Appendix A | Compliance with Nondiscrimination Requirements |
| Appendix C | Standard Federal Assurances and Nondiscrimination in Construction, Maintenance, Operation of Facilities |
| Appendix D | Standard Federal Assurances and Nondiscrimination in Construction, Use, or Access to Facilities |
| Appendix E | Title VI List of Pertinent Nondiscrimination Authorities |
| Appendix 1 | Disadvantaged Business Enterprises- Required Statements |
| Appendix 2 | ACDBE Nondiscrimination and Assurance Requirements |
| Appendix 3 | ACDBE/DBE Policy and Objective Statements |

**TECHNICAL SERVICES SUBLEASE
DENVER INTERNATIONAL AIRPORT**

CONSTRUCTION SUMMARY PAGE

DIA TECH SERVICES, LLC

This Construction Summary Page, consisting of one page, is attached to and made a part of that certain Sublease dated June 1, 2017 between the Skyport Development Company, LLC and the Subtenant named below.

SUBTENANT:

| | |
|-------------|--|
| Name: | <u>DIA Tech Services, LLC</u> |
| Trade Name: | <u>DIA Tech Services</u> |
| Address: | <u>8231 East Prentice Ave. Greenwood Village, CO 80111</u> |
| Contact: | <u>David S. Mosteller</u> |

DESIGN AND CONSTRUCTION DEADLINE:

No later than six months after the Sublease and Non Disturbance and Attornment Agreement have been fully executed and returned to the Subtenant. Subtenant shall submit final design to DRC no later than 5 business days after the Sublease has been signed by the CEO and returned to the Subtenant.

**CONSTRUCTION PERFORMANCE AND
PAYMENT BOND AMOUNTS:**

100% of construction contract price

**CONSTRUCTION INSURANCE
POLICY AMOUNTS:**

| | |
|---------------------------------------|--|
| Builder's Risk: | <u>100% of construction contract price</u> |
| Minimum Commercial General Liability: | |
| Combined Single Limit: | <u>\$1,000,000</u> |
| General Aggregate: | <u>\$2,000,000</u> |
| Business Auto Liability: | |
| Combined Single Limit: | <u>\$1,000,000</u> |
| Workers Compensation: | <u>Statutory requirements</u> |

SBE DESIGN AND CONSTRUCTION GOALS:

\$ 0 < \$30,000 = 0%
\$30,000 - \$90,000 = 3%
\$90,000 < \$150,000 = 5%
\$150,000 + = TBD by Goals
Committee

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TECHNICAL SERVICES SUBLEASE

THIS TECHNICAL SERVICES SUBLEASE, ("Sublease" hereinafter) is made and entered into this 1st day of June, 2017, by and between **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company ("Tenant"), Party of the First Part, and **DIA TECH SERVICES, LLC**, a Colorado limited liability company ("Subtenant") dba **DIA Tech Services**, Party of the Second Part.

RECITALS

WHEREAS, pursuant to the terms of the Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated June 17, 1997, a Seventh Amendment to Agreement dated October 21, 2008, an Eighth Amendment to Agreement dated as of October 29, 2013, and a Ninth Amendment to Agreement dated as of April 13, 2015 (referred to herein as the "Lease") between the Tenant and the City and County of Denver ("City"), Tenant has the right to develop; sublease, use and permit Subtenants to enter into subleases or sublicenses with Tenant to use portions of the Mezzanine on Concourse B as well as the Mezzanine Commons Area for retail, services and food and beverage sales described in the Permitted Uses, using the Brand(s) Authorized for Use and subject to all of the terms, conditions, covenants and provisions of this Sublease.

WHEREAS, The Tenant is required to complete certain Commons Area Improvements described in and consistent with Tenant's design package submitted to the DRC on May 13, 2013 ("Commons Area Improvements"), which include installation of and operation (including repair, upkeep and replacement) of City approved video walls, monitors, and related cabling and monitoring equipment; and

WHEREAS, Subtenant has agreed, at its own cost and expense, that it will own and operate the video walls, monitors, and related cabling and monitoring equipment in designated location in the Commons Area and to sublease from Tenant the Technical Support Space on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 – GENERAL

1.01 CONSIDERATION

The Tenant enters into this Sublease for and in consideration of the payment of compensation by Subtenant as herein provided, the construction of all improvements by Subtenant as herein provided, the operation of a business using the Brand(s) listed on the Summary Page that Subtenant is authorized to use at Denver International Airport, and the performance and observance by Subtenant of the covenants and agreements herein.

1.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS AND ADDENDA

The Summary Pages attached to this Sublease and the Exhibits and Addenda attached to this Sublease as described on the Summary Pages are incorporated

in this Sublease.

SECTION 2 – DEFINITIONS

2.01 AIRPORT

“Airport” or “DIA” shall mean Denver International Airport.

2.02 AIRPORT MASTER PLAN

“Airport Master Plan” or “Master Plan” shall mean the approved master plan for development of Denver International Airport.

2.03 AUDITOR

“Auditor” shall mean the City’s Auditor and his or her authorized representative.

2.04 BRANDS

“Brands” shall mean a word, mark, symbol, design, term or a combination of these, both visual and oral, used for the purpose of identification of some nationally, regionally or locally recognized food and beverage enterprise or product line, retail store or merchandise line, or service operated in “street” locations serving the general public, and unless approved by the CEO shall exclude brands found exclusively at DIA, other airports, or gated venues such as stadiums, arenas, and convention centers. In his or her reasonable discretion, the CEO may amend or modify the Brands or Permitted Uses of the Subtenant’s Technical Support Space described on the Summary Page.

2.05 CHIEF EXECUTIVE OFFICER

“Chief Executive Officer” or “CEO” means the Chief Executive Officer of the City’s Department of Aviation having jurisdiction over the management, operation, and control of Denver International Airport (formerly the Manager). Whenever reference is made to the “CEO or the CEO’s authorized representative,” or words of similar import are used such reference shall mean the officer or employee of the City designed in writing by the CEO as the CEO’s delegated authorized representative.

2.06 CITY

“City” shall mean the City and County of Denver, a municipal corporation of the State of Colorado, acting for and on behalf of the Department of Aviation.

2.07 COMMONS AREA

“Commons Area” or “Mezzanine Commons Area” shall mean all areas, improvements, space, and equipment devoted to or provided for the general usage of all Subtenants occupying a part of the Lease Premises, together with their employees, customers, and other invitees, located on the Mezzanine level of the B concourse at DIA in the space licensed to Tenant by the City pursuant to

Tenant's Lease, including but not limited to all seating areas, improvements, ornamental plantings, and signage.

2.08 COMMONS AREA MAINTENANCE EXPENSE [RESERVED]

2.09 CONCOURSES

"Concourses" shall mean Concourses A, B and C located at the Airport but specifically excludes the Terminal as herein defined.

2.10 DIA DESIGN STANDARDS

"DIA Design Standards" shall mean the design standards and criteria established for Denver International Airport, and as hereafter amended.

2.11 DIA ENVIRONMENTAL GUIDELINES

"DIA Environmental Guidelines" shall mean those portions of the environmental standards and criteria established for non-aviation tenant development and operations at the Airport, and as hereafter amended.

2.12 DIA TENANT DEVELOPMENT GUIDELINES

"DIA Tenant Development Guidelines" shall mean the criteria established at DIA for tenants and concessionaires for design, construction, installation, signage and related matters, and as hereafter amended.

2.13 FACILITIES [RESERVED]

2.14 IMPROVEMENTS

"Improvements," which may also be called "Subtenant Improvements" shall mean any new video displays, video walls, monitors, and related cabling and monitoring equipment installed by Subtenant, as well as modifications or alterations to existing video walls, monitors, and related cabling and monitoring equipment which conform to drawings and specifications approved in writing by the Tenant and the CEO.

2.15 INDEX [RESERVED]

2.16 LEASE PREMISES

"Lease Premises" shall mean all areas, improvements, space, and equipment located on the Mezzanine level of the B concourse at DIA in the space leased to Tenant by the City pursuant to Tenant's Lease.

2.17 NON DISTURBANCE AND ATTORNMENT AGREEMENT

"Non Disturbance and Attornment Agreement" shall mean that certain Non Disturbance, Attornment and Concession Agreement among the Tenant, the City and Subtenant concerning non-disturbance of and attornment by the Subtenant in the event of a termination of Tenant's Lease and the grant of a concession to the

Subtenant commencing upon the scheduled expiration of Tenant's master lease (currently May 31, 2019).

2.18 PAST DUE INTEREST RATE

"Past Due Interest Rate" shall mean interest accruing at 18% per annum commencing on the fifth business day after the date such amount is due and owing until paid to Tenant.

2.19 PRICING PLAN [RESERVED]

2.20 PROMOTION EXPENSES [RESERVED]

2.21 PRODUCTS [RESERVED]

2.22 SUBLEASE

"Subtenant's Sublease" shall mean this Agreement.

2.23 SUBTENANT'S TECHNICAL SUPPORT SPACE

"Subtenant's Technical Support Space" shall mean the locations generally depicted on the Subtenant's Technical Support Space Plan attached hereto as **Exhibits A-1 and A-2**, sublet from Tenant and located within the Concourse B Mezzanine and with Space BM-3D-1 containing the number of square feet set forth on the Summary Page. The Tenant and Subtenant acknowledge and agree that the dimensions of the Subtenant's Technical Support Space as set forth in **Exhibit A-1 and A-2** are approximate and that, following the completion of construction, the precise dimensions and square footage shall be determined by the Tenant and a revision to the Summary Page and **Exhibits A-1 and A-2** will be made, if necessary, depicting the dimensions and square footage of the Subtenant's Technical Support Space as actually constructed, each of these actions to be taken without the requirements of a formal amendment to this Sublease. The Tenant may add or subtract square footage of up to 10% of the Subtenant's Technical Support Space (with a corresponding adjustment to the Minimum Annual Guarantee) with the prior written consent of the Subtenant without a formal amendment to this Sublease.

2.24 SUBTENANT'S PROPOSAL [RESERVED]

2.25 TENANT

"Tenant" shall mean Skyport Development Company, LLC, a Colorado limited liability company.

2.26 TENANT'S LEASE

"Tenant's Lease" or "Lease" shall mean the Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement) by and between the City and Tenant as amended from time to time. The initial version of the Lease was dated June 17, 1997.

2.27 TERMINAL

“Terminal” shall mean the Jeppesen Terminal Building located at the Airport.

SECTION 3 – GRANT OF RIGHTS

3.01 RIGHTS GRANTED

It is the City’s purpose to create and maintain a vibrant first-class concession program at Denver International Airport offering a range of quality food and beverage, retail and services in a branded environment, with particular emphasis on established local and national brands. Accordingly, Subject to the CEO’s written consent, Tenant grants to Subtenant the right to occupy, improve and use the Subtenant’s Technical Support Space consistent with the City’s purpose, and subject to all of the terms, conditions, covenants and provisions of this Sublease. Subtenant accepts such grant for the entire term of this Sublease.

3.02 USE OF SUBTENANT TECHNICAL SUPPORT SPACE

Subtenant understands and agrees that the use of the Subtenant Technical Support Space is to support the installation and operation of Improvements pursuant to this Technical Services Sublease, which is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over the Airport.

3.03 RIGHTS NOT EXCLUSIVE

Tenant reserves the right hereunder, and the City has reserved the right under Tenant’s Lease, to grant to other concessionaires the right to operate facilities and sell products or services in other locations at the Airport that are the same as or similar to those described on the Summary Page. Subtenant understands and agrees that its right to provide the services set forth on the Summary Page is not exclusive.

3.04 MEANS OF ACCESS

Subtenant, its agents, invitees, guests, employees and suppliers have a non-exclusive right of ingress to and egress from the Subtenant’s Technical Support Space by a means of access located outside the boundaries of such space as has been granted by the City to Tenant in Tenant’s Lease and within the Subtenant’s Technical Support Space as specified by Tenant. The Lease provides that such access shall, without exception, be in common with such other persons (including, at the option of the City, the general public) as the City may authorize or permit, and the City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purpose.

In the Tenant’s Lease, the City grants a license to Tenant to use the Mezzanine Commons Area (identified on page 3 of **Exhibit A**) for certain stated purposes or as otherwise approved by the CEO: The Tenant and the City agreed that this license is for the purpose of promoting and benefiting the Lease Premises so as

to increase the revenues and the enjoyment thereof.

For that reason, the Lease provides that the license shall remain in effect throughout the Term of the Lease unless terminated by the CEO for the following specified reasons: 1) expiration or earlier termination of the Lease, 2) use of the Mezzanine Commons Area is inconsistent with the provisions of this Lease or that unreasonably impedes access by the public and other tenants to adjacent premises and amenities in the Airport, or 3) the CEO determines that the license must be terminated for reasons of Airport security, flight operations, or safety. Prior to any termination, Tenant shall receive notice and an opportunity to cure and the license shall be modified rather than terminated if the offending use is severable from the remaining uses.

The Lease further provides that to the extent that the City needs the Mezzanine Commons Area for a short term use necessary for the operation of the Airport (such as for security, flight operations, airport efficiency or safety), then the license will only be temporarily revoked not terminated, with such space to be restored a reasonable time after the City no longer needs any such space. The Lease provides that the Tenant shall not be entitled to any compensation or abatement of rent if the City's use of Mezzanine Commons Area does not interfere substantially with the Tenant's operations or Tenant's use of the Mezzanine Commons Area. Likewise, the Subtenant shall not be entitled to any compensation or abatement of rent if the City's use of Mezzanine Commons Area does not interfere substantially with the Subtenant's operations. Prior to any such temporary revocation Subtenant shall receive notice from the Tenant and an opportunity for comment.

This right of access is subject to the security requirements of the section herein entitled "Security." Moreover, without exception, nothing in this Sublease shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport or using the roadways in or on the Airport, or soliciting passengers upon the Airport, or otherwise operating on the Airport; and City reserves the right to make such charges provided that they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers or property of Subtenant.

3.05 RIGHT OF INSPECTION

Tenant and the City under Tenant's Lease, retain the full right of entry in and to the Subtenant's Technical Support Space for any purpose necessary, incidental to or in connection with their obligations hereunder, or for the purpose of making any inspection it deems necessary, or in the case of the City in the exercise of its governmental functions, with or without advance notice, provided, however, that except in emergencies, the City and Tenant will attempt to provide reasonable advance notice to Subtenant.

SECTION 4 – TERM

4.01 TERM

“Term” shall mean the period commencing at noon on the Effective Date and expiring at noon on the Expiration Date both of which are specified on the Summary Page except as may be provided in a Non Disturbance, Attornment and Concession Agreement.

4.02 SURRENDER OF SUBTENANT’S TECHNICAL SUPPORT SPACE

Upon the expiration or earlier termination of this Sublease or on the date specified in any demand for possession by Tenant after any default by Subtenant, Subtenant covenants and agrees to surrender possession of the Subtenant’s Technical Support Space to Tenant in the same condition as when first occupied, ordinary wear and tear excepted. Subtenant covenants and agrees to cooperate with the Tenant’s closeout procedures.

However, if the Tenant determines in his commercially reasonable judgment upon such expiration or termination, that Subtenant’s Technical Support Space was not surrendered in accordance with the preceding standard, then Subtenant, at its sole cost, shall have the option of either of the following actions: (i) bringing such specified Improvements up to the above referenced standard or (ii) removing the entire Improvements or such portion thereof as is specified by the Tenant. Either option shall be completed by Subtenant within 10 days of such expiration or termination or within such additional time as is granted by the Tenant. During this 10-day period Subtenant will be deemed to be holding over and shall pay 150% of the Minimum Monthly Guaranty (prorated on a daily basis) until the Subtenant’s Technical Support Space is returned in the condition required.

If all or any portion of the Improvements are removed by Subtenant either at any time during the Term or in accordance with this Section, Subtenant shall at its expense restore any City and/or Tenant property affected to conditions existing prior to the installation of such Improvements or applicable portions thereof, ordinary wear and tear excepted, and upon Subtenant’s failure to do so the Tenant or the City may cause such removal and restoration to be done at Subtenant’s expense.

4.03 HOLDING OVER

If Subtenant holds over after expiration of the Term or any extension thereof, thereafter Subtenant’s occupancy shall be at sufferance at a monthly rental, payable in advance, equal to 150% of the monthly compensation provided in Section 5 herein, but otherwise Subtenant shall be bound by all terms and conditions as herein provided in the absence of a written agreement to the contrary. Tenant, in its sole discretion, may waive the additional rent and allow Subtenant to holdover at the rates stated in Section 5. Nothing herein shall be construed to give Subtenant the right to hold over at any time, and Tenant or the City (after expiration or termination of Tenant’s Lease), as the case may be, may exercise any and all remedies at law or in equity to recover possession of the Subtenant’s Technical Support Space, as well as any damages incurred on account of such holding over.

4.04 REMOVAL OF SUBTENANT’S IMPROVEMENTS AND EQUIPMENT

Subtenant shall remove, at its sole cost, prior to the expiration or termination of

this Sublease, all of Subtenant's Improvements and Equipment, as hereinafter defined. "Subtenant's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures and personal property (including, but not limited to the video displays, video monitors, and similar equipment) installed by Subtenant and used in the operation of the business of Subtenant. If such removal shall injure or damage the Airport's Property or Subtenant's Technical Support Space, Subtenant agrees, at its sole cost, at or prior to the expiration or termination of this Sublease, to repair such injury or damage in good and workmanlike fashion and to place the Airport's Property or Subtenant's Technical Support Space in the same condition as the Airport Property or Subtenant's Technical Support Space would have been if such Improvements or Equipment had not been installed, ordinary wear and tear excepted. If Subtenant fails to remove any of Subtenant's Improvements or Equipment by the expiration or termination of this Sublease, Tenant may, at its option, keep and retain any such Subtenant's Improvements or Equipment or dispose of the same and retain any proceeds therefrom, and Tenant shall be entitled to recover from Subtenant any costs of Tenant's in removing the same and in restoring the Airport's Property or Subtenant's Technical Support Space in excess of the actual proceeds, if any, received by Tenant from disposition thereof. In addition, if Tenant removes any such Subtenant's Improvements or Equipment, the Subtenant agrees in its Sublease to indemnify and hold Tenant harmless from all costs, losses, expenses or damages incurred in relation to the removal of such Improvements or Equipment, including without limitation all costs of associated remedial actions, fines or penalties, reasonable attorney fees, engineering fees and other professional expert fees.

SECTION 5 – COMPENSATION

5.01 COMPENSATION

- A. Subtenant covenants and agrees, without offset, deduction or abatement, to pay Tenant as compensation for the rights and privileges herein granted by Tenant the Minimum Annual Guaranty and in addition thereto, Additional Rent pursuant to Section 5.03. Said obligation to pay compensation shall commence upon the Rent Commencement Date set forth in Section 5.03 herein and continue through the Term hereof.
- B. As used in this Section 5.01, the term "Minimum Annual Guarantee" shall mean the Minimum Annual Guarantee on the Summary Page as re-established hereunder from time to time.

5.02 GROSS REVENUES [RESERVED]

5.03 PAYMENT OF COMPENSATION

- A. ***Minimum Monthly Guarantee.*** The Minimum Monthly Guarantee, an amount equal to one-twelfth of the Minimum Annual Guarantee shall be payable by Subtenant to Tenant in advance and without demand on December 1, 2017 (referred to herein as the "Rent Commencement Date") and on the first day of each calendar month thereafter.

- B. **First Month's Monthly Guarantee; Security Deposit.** Upon execution of this Sublease by Subtenant, it will pay Tenant the first month's Monthly Guarantee and deliver to Tenant the Security Deposit shown on the summary page, which amounts will be promptly refunded if the Sublease is not approved by the CEO.
- C. **Additional Rent.** In addition to the Minimum Annual Guarantee payable hereunder, Subtenant shall pay, as "Additional Rent" (whether or not so designated herein), in a manner and at the place provided in this Sublease, all sums of money required to be paid by Subtenant under this Sublease. If such amounts or charges are not paid at the time and in the manner as provided in this Sublease, they shall nevertheless be collectible as Additional Rent with the next installment of compensation thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of the Tenant or the City. All amounts of Minimum Annual Guarantee and Additional Rent (also collectively referred to in this Sublease as "Rental") payable in a given month shall be deemed to comprise a single rental obligation of Subtenant to Tenant. For purposes of this Section 5.04 all such monies received or collected by any agent or subcontractor of Subtenant, and any such monies in possession of any such agent or subcontractors, shall be deemed to be in the Subtenant's possession and control.
- D. **Liquidated Damages.** It is expressly understood and agreed that Tenant does not consider the Minimum Annual Guarantee in itself a fair and adequate rental for the Subtenant's Technical Support Space, and would not have entered into this Sublease unless Subtenant had obligated itself to pay the Percentage Compensation Fee, which the Tenant expects to supplement the Minimum Annual Guarantee to provide a fair and adequate rental return. Therefore, if Subtenant fails to continuously operate its business in accordance with the terms of this Sublease, or vacates the Subtenant's Technical Support Space prior to the expiration of the Term hereof, the Tenant will suffer damages in an amount which is not readily ascertainable and thus Tenant, in any such event, shall have the right, at its option, to collect as liquidated damages, and not as a penalty, in addition to all other charges and the Minimum Annual Guarantee due hereunder, one-thirtieth (1/30th) of an amount equal to the greater of (a) the amount of the Minimum Annual Guarantee due for the month in which Subtenant failed to operate as required by this Sublease, or (b) the average monthly amount of the Minimum Annual Guarantee and Percentage Compensation Fee payable for the immediately preceding twelve months, calculated on a daily basis, for each day or portion thereof during which Subtenant fails to operate as required by this Sublease including, without limitation, Subtenant's failure to maintain the required operating hours, and, in addition, Tenant shall have the right to treat any of such events as a material default and breach of this Sublease.
- G **Subtenant's Payment Obligations.** Subtenant covenants to pay all compensation and charges under this Sublease independent of any obligation of the Tenant. No breach of this Sublease by the Tenant shall relieve Subtenant of its obligation and duty to pay all such compensation and charges when due under the terms of this Section 5.

5.04 TITLE TO TENANT'S COMPENSATION

Immediately upon Subtenant's receipt of monies from the sale of services that it is authorized to sell under the terms of this Sublease, the percentages of said monies belonging to Tenant, if any, shall immediately vest in and become the property of the Tenant. Subtenant shall be responsible as trustee for said monies until the same are delivered to Tenant.

5.05 INTEREST ON PAST DUE AMOUNTS

Any payments not made to Tenant when due shall accrue interest at the Past Due Interest Rate, as herein defined.

5.06 PLACE AND MANNER OF PAYMENTS

All sums payable to Tenant hereunder shall be made payable to "Skyport Development Company, LLC" and paid without notice at the following:

Skyport Development Company, LLC
c/o Mr. David Mosteller
8231 East Prentice Avenue
Greenwood Village, Colorado 80111

or at such other place as the Tenant or his authorized representative may hereafter designate by notice in writing to Subtenant. All sums shall be made in legal tender of the United States. Any check given to the Tenant shall be received by it subject to collection, and Subtenant agrees to pay any charges, fees or costs incurred by the Tenant for such collection, including reasonable attorney's fees, costs and expenses.

5.07 APPLICATION OF PAYMENTS

The Tenant, at its option and its sole discretion, may apply any payments received from Subtenant to any rental, compensation or other charges that are then due and payable. If the Tenant shall not make any specific application of a payment received from Subtenant, then any payment received from Subtenant shall be applied first to compensation which has been overdue for the longest period of time, then to the other charge(s). No designation of any payment by Subtenant for application to a specific portion of Subtenant's financial obligations hereunder shall be binding upon the Tenant. No endorsements or statement on any check or any letter accompanying any check or payment as compensation or other charges shall be deemed an accord and satisfaction, and the Tenant shall accept such check or payment without prejudice to the Tenant's right to recover the balance of any and all compensation or other charges due from Subtenant to the Tenant or to pursue any other remedy provided in this Sublease or in law or equity. In the event of a default by a Subtenant, the Security Deposit may be applied to past due obligations in the order incurred, and any excess may be used to reduce damages to the Tenant from loss of that Subtenant's Rent.

5.08 BOOKS OF ACCOUNT AND AUDITING

The Tenant and the City shall have the right to audit, copy, and examine within the Denver metropolitan area all books and records of Subtenant. Subtenant agrees that the Tenant

and the CEO, the Auditor, and their authorized representatives, may inspect any documents, returns, data or reports filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Subtenant with the City's CEO of Revenue and any related reports, documents, data or other information generated by the City's CEO of Revenue or employees under the control of such CEO of Revenue in connection with any investigation or audit of Subtenant by the City's Department of Revenue. Subtenant authorizes and permits the inspection of such documents, data, returns, reports and information by Tenant, the CEO, the Auditor and their authorized representatives, and, further, waives any claim of confidentiality that it may have in connection with such inspection of documents, returns, data, reports and information.

5.09 RESERVED.

5.10 FAILURE TO FILE MONTHLY OR ANNUAL REPORTS [RESERVED]

5.11 REESTABLISHMENT OF RENTALS, FEES AND CHARGES

The City, through the CEO, may from time to time, at intervals of not more than five (5) years, at the CEO's sole discretion, and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees and charges to Tenant provided for in Tenant's Lease. The City agrees that such reestablished schedule of rentals, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining property, services and facilities of the airport system. Tenant shall have the right to pass through the amount of any increase in the rents, fees and charges, allocating the same equitably among the subtenants' Support Spaces within the Lease Premises.

If the CEO proposes any change in the schedule of rentals, fees and charges payable by Tenant under Tenant's Lease, the City will give notice thereof to Tenant not less than 90 days before the same is to become effective. Tenant shall have the right to pass the proposed change on to the Subtenant by giving notice thereof to Subtenant not less than 75 days before the same is to become effective. Should the proposed rentals, fees and charges result in an increase of more than 5% in the dollar amount of compensation paid by Subtenant for the prior calendar year, then Subtenant may decline to pay compensation at the new rate(s). Subtenant shall promptly advise the Tenant (but in no event less than 60 days prior to the proposed effective date of such schedule of rentals, fees and charges) of its intention to cancel and terminate this Sublease. Upon such notice of intent to cancel and terminate, Subtenant shall surrender the Subtenant's Technical Support Space upon a date specified by the Tenant but in no event less than 120 days. Should Subtenant fail to give such notice of cancellation and termination, then it shall be deemed to have accepted the new rate(s) of compensation described in the notice from Tenant.

If Subtenant surrenders its Subtenant Technical Support Space under this paragraph, the Tenant will (i) return the space to the City, or (ii) to make good faith efforts to relet the space. Any replacement or successor subtenant or concessionaire for the same space, as a condition of doing business at DIA, shall be required to reimburse the Subtenant for either the unamortized book value or actual value of the Subtenant's remaining capital improvements in place, whichever is less. The book value will be audited at Subtenant's expense upon Tenant's or the City's request.

No failure by the City to reestablish the rentals, fees and charges at a five (5) year interval date shall constitute a waiver of the City's right to reestablish the rentals, fees and charges at any time thereafter, as provided in Tenant's Lease.

5.12 COMMONS AREA AND PROMOTION EXPENSES [RESERVED]

5.13 EXPENSE ACCOUNTING [RESERVED]

SECTION 6 – CONSTRUCTION OF AND OPERATION OF SUBTENANT TECHNICAL SUPPORT SPACE

6.01 CONSTRUCTION OF IMPROVEMENTS

Subtenant, at its own cost and expense, may construct and install Improvements in accordance with (i) DIA Tenant Development Guidelines, and ***Exhibit X, Provisions for Design and Construction of Improvements***, (ii) the applicable construction provisions of this Section 6, applicable statutes, FAA approval requirements, City ordinances, the Building Code, applicable governmental regulations and (iii) pursuant to the City's building permit process and the customary terms and conditions thereof. Improvements are subject to and may not be constructed or installed without the consent of the Tenant and the prior written approval of the CEO and the parties agree that time is of the essence in the performance of these obligations.

6.02 REQUIRED MINIMUM INVESTMENT [RESERVED]

6.03 PLANS AND SPECIFICATIONS [RESERVED]

6.04 CONSTRUCTION PROCEDURES [RESERVED]

6.05 COORDINATION OF CONSTRUCTION [RESERVED]

6.06 ENVIRONMENTAL REQUIREMENTS FOR CONSTRUCTION [RESERVED]

6.07 AS-BUILT DRAWINGS [RESERVED]

6.08 BUILDING PERMITS [RESERVED]

6.09 CONSTRUCTION BONDS [RESERVED]

6.10 CONSTRUCTION INSURANCE [RESERVED]

6.11 LIMITATION ON LIABILITY

Subtenant agrees that no liability shall attach to the Tenant or the City for any damages or losses incurred or claimed by Subtenant or any other person or party on account of the construction or installation of the Improvements or other improvements to or upon Airport property made by Subtenant. Subtenant agrees that no liability shall attach to the Tenant or the City for any interference or delay caused by construction in adjacent areas, other businesses, or Airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. Subtenant agrees to indemnify, defend, and hold harmless the Tenant and the City from any loss, cost, damage, or expense incurred, claimed, asserted, or arising in connection with

Subtenant's, or its contractors or agents, construction or installation of the Improvements or other improvements to or upon the Airport made by Subtenant; provided, however, Subtenant shall not be required to indemnify the City for any loss, cost, or damage arising solely from the negligence of the City nor shall Subtenant be required to indemnify the Tenant for any loss, cost, or damage arising solely from the negligence of Tenant.

6.12 RESTRICTION ON CHANGES AND ALTERATIONS

After construction and installation of any improvements, Subtenant agrees not to materially improve, change, alter, add to, remove, or demolish all or any part of the Improvements without the prior written consent of the Tenant and the CEO, which consent shall not be unreasonably withheld.

6.13 OPENING FOR BUSINESS [RESERVED]

6.14 OPERATIONS

Purpose. The operation of Subtenant is undertaken in part to further the City's goals of creating and maintaining a vibrant first-class concession program on the Concourse B Mezzanine area (targeting primarily business travelers). In that spirit, Subtenant agrees to conduct its business to accommodate the public using the Airport and to install and operate the video walls in a first-class manner satisfactory to Tenant and the CEO or her authorized representative. Subtenant's services shall be prompt and efficient.

- A. Subtenant shall comply with all applicable federal, state and local laws and regulations, obtain and maintain at all times at its own expense, all licenses, certificates and any other such documents necessary for the operation of its business at the Airport. Subtenant shall allow duly authorized representatives of governmental entities access to the Subtenant's Technical Support Space for inspection purposes.
- B. Within thirty days from the date of the CEO's consent to this Sublease, the Tenant, City, and Subtenant shall enter into a Non Disturbance and Attornment Agreement, in a form acceptable to the City, which shall govern the rights and obligations of the City and Subtenant in the event of a termination of Tenant's Lease.
- C. The Tenant and the CEO or their authorized representatives shall have the right to make reasonable objections to the quality of the video walls or their installation, the content displayed, the character of the service rendered in the operation of the video walls, and the appearance and condition of the Subtenant's Technical Support Space. Subtenant agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice from Tenant or the CEO or his authorized representative. If Subtenant fails to comply with said notice, Subtenant shall pay within 10 days of demand therefor by the Tenant or by the City through the Tenant, as Additional Rent, in addition to all other charges or compensation payable hereunder, \$100.00 per day for each day in which Subtenant failed to comply with this Section in order for Tenant to reimburse the City for the additional administrative expenses resulting therefrom. This remedy shall be in addition to any and all other remedies provided in this Sublease or in law or in equity to the Tenant (and the City).

6.15 PRICING PLAN [RESERVED]

6.16 HOURS OF OPERATION

- A. Continuous Operation. Except as may be otherwise authorized or stated on the Summary Page, Subtenant agrees to keep its Video Walls functioning for public viewing every day, including weekends and holidays, for not less than 24 hours per day except for scheduled maintenance as agreed to by the Parties and temporary interruptions for unscheduled maintenance and repairs.
- B. Exceptions. Exceptions to Subtenant's obligations under this Section may be authorized in advance in writing by the Tenant.
- C. Noncompliance. If Subtenant fails to comply with any of the provisions of this Section, the Tenant will suffer damages in an amount which is not readily ascertainable and Tenant, in any such event, shall have the right at its option, and at the City's request, the obligation to collect as liquidated damages, and not as a penalty, in addition to all other charges or compensation payable hereunder, \$150.00 per day for each day in which Subtenant failed to comply with this Section 6.16. This remedy shall be in addition to any and all other remedies provided in this Sublease or in law or in equity to the Tenant.

6.17 SIGNS, WINDOW DISPLAYS, AND ADVERTISING

- A. Except as permitted under this Section and the DIA Tenant Development Guidelines, Subtenant shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof of the Subtenant's Technical Support Space, or on the interior or exterior surface of the glass of any window or door of the Subtenant's Technical Support Space, or on any common area, walkway or other location outside the Subtenant's Technical Support Space, or on or within any display window space in the Subtenant's Technical Support Space, whether or not there is display window space in the Subtenant's Technical Support Space, or within any entrance to the Subtenant's Technical Support Space.
- B. No symbol, design, name, mark or insignia adopted by the City for the Airport shall be used without the prior written consent of the City.
- C. Under no circumstances shall any handwritten or temporary signs or displays be posted or used by Subtenant, including but not limited to any menu boards, price lists or employment opportunity signs.
- D. Permission will not be granted for any advertising inconsistent with the advertising rights held by any advertising company which has contracted with the City to sell advertising at the Airport or which fails to comply with DIA Design Standards or DIA Tenant Development Guidelines, or any advertising material, sign, fixture or equipment which extends beyond the Subtenant's Technical Support Space. No advertising shall be sold without the specific written consent of the Tenant and the CEO.

- E. In the event Subtenant shall be in default of this Section, Subtenant shall pay Tenant as Additional Rent \$100.00 for each day of default in order for Tenant to reimburse the City for the additional administrative expenses resulting therefrom.

6.18 MODIFYING SUBTENANT'S OPERATION [RESERVED]

6.19 REPLACEMENT OF VIDEO WALLS, MONITORS, AND RELATED CABLING AND MONITORING EQUIPMENT (CONSISTENT WITH THE INDUSTRY BEST PRACTICES)

Subtenant selected Subtenant's Equipment after consultation with Tenant and the Airport with the expectation that the useful life of Subtenant's Equipment will exceed the term of Subtenant's occupancy of Subtenant's Technical Support Space. As a result, the parties have agreed that there is no required refurbishment or replacement of Subtenant's Equipment. Subtenant will maintain Subtenant's Equipment in first class condition throughout the term of Subtenant's occupancy of Subtenant's Technical Support Space.

6.20 CARE OF AREA

Subtenant agrees that in accordance with Section 7.06 it will keep the Subtenant's Technical Support Space in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Subtenant, at its own expense, shall collect and deposit all trash and refuse at frequent intervals at collection station locations specified by the City. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted within the Subtenant's Technical Support Space or in any public area in the Airport.

6.21 VENDING MACHINES

No amusement or vending machines or other machines operated by coins, tokens or credit cards shall be installed or maintained in or upon the Subtenant's Technical Support Space except with the written permission of Tenant and the CEO or his authorized representative. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; telephones; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

6.22 COMPLIANCE WITH ALL LAWS AND REGULATIONS

Subtenant agrees not to use or permit the Subtenant's Technical Support Space to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Subtenant's Technical Support Space in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the CEO for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency. Subtenant further

agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Subtenant or which the CEO may request relating to Subtenant's operations.

- A. **Americans with Disabilities Act.** Without limiting the foregoing, Subtenant shall comply at all times with the Americans with Disabilities Act, 42 USC §12,000 et seq., and all applicable regulations adopted pursuant thereto, in the physical conditions in the Subtenant's Technical Support Space and in Subtenant's operations.
- B. **Small Business Opportunity Division.** Subtenant agrees to comply with the Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, in the design and construction of Improvements throughout the term of this Lease. Subtenant agrees to comply with rules and regulations issued by the Director of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. The DSBO Director will set goals for each design and construction phase of the Project in accordance with the MBE/WBE Ordinance. Subtenant shall meet, or make a good faith effort to meet, such goals. Subtenant shall submit to DSBO monthly reports in a form satisfactory to DSBO identifying all MBE and WBE firms and the amounts spent with such firms during the preceding month for the purpose of demonstrating compliance by Subtenant with this section.
- C. **DBE Obligation.** This Sublease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Subtenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

Subtenant agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and causes those businesses to similarly include the statements in further agreements.

The Director of Denver's Division of Small Business Opportunity ("DSBO") has establish ACDBE concession specific goals as a percent of annual gross receipts for each of the concession operations to be undertaken by the Tenant under the Tenant's Lease. Tenant's goals are stated on the Summary Page.

Subtenant identified ACDBEs that Subtenant would retain as subtenants, joint venture partners, suppliers or service providers (ACDBE firms) to participate in the operations to be carried out under this Sublease. After this Sublease is executed, the Subtenant agrees that it shall make good faith efforts, and cause its subtenants and concessionaires to make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the concession specific goals stated on the Summary Page for ACDBE participation in the performance of this Sublease. Subtenant has achieved the ACDBE participation stated on the Summary Page

and covenants to maintain such ACDBE participation throughout the term of this Sublease.

The Subtenant and its subtenants and concessionaires will be required to submit to DSBO the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) the dollar amount of the participation of each ACDBE firm participating; (4) written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal; (5) written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment, and (6) If the contract goal is not met, evidence of good faith efforts.

Subtenant agrees to enter into agreements, and to cause its subtenants and concessionaires to enter into agreements, with the ACDBE firms it identifies to DSBO as ACDBE participants in its activities under this Sublease. Throughout the term of this Sublease, Subtenant agrees that it shall continue to utilize qualified and available ACDBE firms which have been and continue to be certified by the City to the fullest extent which is reasonably possible to achieve and to an extent necessary to comply with the requirements of 49 CFR Part 23.

If an ACDBE subtenant, joint venturer, supplier or service provider must be replaced for any reason during the Sublease Term, Subtenant agrees to replace the subtenant, joint venturer, supplier or service provider with another ACDBE, or if it cannot, then Subtenant shall demonstrate that it made good faith efforts to do so.

Subtenant agrees that it shall include the provisions of this section in every contract entered into in connection with the operation of the Project, so that such provisions will be binding upon each subcontractor, supplier or service provider.

Subtenant further agrees that it shall comply with all disadvantaged business enterprise regulations of the U.S. Department of Transportation as they may be adopted or amended from time to time prior to or during the Sublease Term.

Subtenant shall submit to DSBO monthly reports in a form satisfactory to DSBO identifying all DBE firms and the amounts spent with such firms during the preceding month for the purpose of demonstrating compliance by Subtenant with this section. Subtenant shall also submit an annual report describing the same information as required by the monthly reports as a part of Subtenant's certified audit submitted to the City.

- D. This Section applies to all actions governed by this Sublease throughout its Term, and Subtenant understands that it must continue to meet the requirements of all laws, including the M/W/SBE and DBE requirements, as they may apply to Subtenant's activities under this Sublease.

6.23 COMPLIANCE WITH ENVIRONMENTAL REGULATIONS

Subtenant, in conducting any activity on any Airport property shall comply with all

applicable airport, local, state and federal rules, regulations, statutes, laws or orders, and DIA Environmental Requirements set forth in DIA Rules and Regulations.

Subtenant hereby specifically agrees to indemnify and hold Tenant and the City harmless from and against any and all claims, losses, liability, remedial action requirements, enforcement actions of any kind, or costs and expenses, including attorney fees, incurred in connection with or arising from the presence of any hazardous materials or release of any hazardous materials on, under or emanating from Subtenant's Technical Support Space relating to Subtenant's use or occupation of the Technical Support Space, or any activity undertaken by Subtenant on or off of Subtenant's Technical Support Space in connection with cleanup, handling, treatment, transport or disposal of any hazardous materials on or emanating from the Subtenant's Technical Support Space relating to Subtenant's use or occupation of Subtenant's Technical Support Space.

6.24 WASTE OR IMPAIRMENT OF VALUE

Subtenant agrees that nothing shall be done or kept in the Subtenant's Technical Support Space which might impair the value of the Tenant's or the City's property or which would constitute waste.

6.25 HAZARDOUS USE

Subtenant agrees that nothing shall be done or kept in the Subtenant's Technical Support Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Subtenant's Technical Support Space which might be unsafe or hazardous to any person or property. Further, Subtenant shall not do or permit to be done any act or thing upon the Subtenant's Technical Support Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Sublease, or carried by the Tenant or the City, covering the Subtenant's Technical Support Space or the buildings in which the Subtenant's Technical Support Space is located or which, in the opinion of the Tenant or the CEO or his authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Sublease. If, by reason of any failure by Subtenant to comply with the provisions of this section, after receipt of notice in writing from the Tenant or the City, any fire insurance rate on the Subtenant's Technical Support Space or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Subtenant shall pay the City or the Tenant, as appropriate, on demand, that part of all fire insurance premiums paid by the City or the Tenant which have been charged because of such violation or failure of Subtenant; provided, that nothing herein shall preclude Subtenant from bringing, keeping or using on or about the Subtenant's Technical Support Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

6.26 STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING

Subtenant agrees that nothing shall be done or kept on the Subtenant's Technical

Support Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Subtenant's Technical Support Space which might impair the structural soundness of the building, result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Subtenant agrees immediately to remedy the violation at Subtenant's expense.

6.27 NOISE, ODORS, VIBRATIONS AND ANNOYANCES

Subtenant shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Subtenant's Technical Support Space or annoy, disturb or be offensive to others in the Terminal or Concourses and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

6.28 ACCESS TO FACILITY AND SYSTEMS

Subtenant shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Subtenant's Technical Support Space or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the Subtenant's Technical Support Space or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Further, Subtenant shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Subtenant's Technical Support Space, including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.

Subtenant shall not place any additional lock of any kind upon any window or interior or exterior door in the Subtenant's Technical Support Space, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the Subtenant's Technical Support Space, nor refuse, upon the expiration or sooner termination of this Sublease, to surrender to Tenant any and all keys to the interior or exterior doors on the Subtenant's Technical Support Space, whether said keys were furnished to or otherwise procured by Subtenant. If any keys furnished to Subtenant by Tenant are lost, Subtenant shall pay the Tenant, on demand therefor, as Additional Rent, the cost for replacement thereof.

6.29 NO AUCTION [RESERVED]

6.30 TITLE TO IMPROVEMENTS

Upon installation, of the video walls, monitors, and related cabling and monitoring equipment Tenant agrees that title shall pass to the Subtenant and the video walls, monitors, and related cabling and monitoring equipment shall become the property of Subtenant upon installation.

Subtenant agrees that all improvements to the Subtenant's Technical Support Space, including approved changes and renovations, which are affixed to the realty (excluding Subtenant's Equipment), shall become the property of the City upon their completion and acceptance by the City.

SECTION 7 – UTILITIES AND SERVICES

7.01 UTILITIES

Most Tenant areas in the Terminal and Concourses have services of adequate capacity to supply reasonable amounts of hot or chilled water, gas, electricity, potable water, fire protection, sanitary waste, grease waste and storm sewer capacity to serve the Tenant areas. The Subtenant shall verify capacity of all systems in the Subtenant's Technical Support Space and shall be responsible for all utility system upgrades that are necessary for a Technical Support Space build out. Subtenant shall be responsible for the payment of all utilities required for operations in the Subtenant's Technical Support Space.

7.02 HEATING AND AIR CONDITIONING (HVAC)

Tenant shall, at its expense, furnish, install and maintain any ductwork and other connections within or leading into its Subtenant's Technical Support Space required to connect and complete the HVAC from the Airport's central system for the Subtenant's Technical Support Space.

In Tenant's Lease, the City has agreed, at its expense, to furnish normal and reasonable quantities of central air from the central HVAC system to the Subtenant's Technical Support Space and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the City is obligated to Tenant to maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; and Tenant shall in turn provide such utilities to Subtenant to the extent the City performs its obligations to Tenant; provided, that Subtenant properly maintains the ductwork and other connections within or leading into its Subtenant's Technical Support Space and complies with the recommendations of the City's engineer regarding reasonable occupancy and use of the Subtenant's Technical Support Space.

7.03 WATER SERVICE

If water service is required in Subtenant's Technical Support Space, Subtenant shall, at its expense, furnish, install and maintain a water meter at a location and of a type specified by the City and shall pay all costs for water used within the Subtenant's Technical Support Space. Subtenant shall be responsible for all water hook-up of its equipment.

In Tenant's Lease, the City has agreed to furnish water from the central water source in reasonable quantities; and Tenant shall in turn provide and water to Subtenant; provided that Subtenant complies with all water conservation programs in effect or as adopted.

7.04 ELECTRICITY AND NATURAL GAS

Subtenant shall, at its expense, furnish, install and maintain an electric meter and a gas meter if required, at a location and of a type specified by the City, and shall pay all costs for electricity and gas used within the Subtenant's Technical Support Space. Subtenant shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Subtenant's Technical Support Space. Any bills by the City for such costs shall be due within 30 days and shall accrue interest at the Past Due Interest Rate if not paid when due.

In Tenant's Lease, the City has agreed to provide Tenant with a premises wiring system to the Subtenant's Technical Support Space which will handle electronic information such as telephone and telecommunications equipment and to the extent so provided Tenant will in turn provide such system to Subtenant. Subtenant shall be responsible for any extension of the wiring and connection of any terminals and devices in accordance with City requirements, and shall pay for telephone service to the Subtenant's Technical Support Space.

7.05 LIGHTING

Subtenant shall, at its expense, furnish, install and maintain all lighting fixtures and wiring for general illumination of the Subtenant's Technical Support Space. Levels of illumination and wattage requirements shall be subject to approval by the City.

7.06 JANITORIAL SERVICES AND MAINTENANCE

- A. Subtenant shall, at its expense, be responsible for janitorial services for the Subtenant's Technical Support Space. Subtenant shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Lease Premises or to be disposed of improperly.
- B. The cost of maintenance, care, and any necessary replacement of the Improvements in Subtenant's Technical Support Space shall be born by the Subtenant. Subtenant agrees, at its expense and without cost or expense to the Tenant, during the Term hereof, that:
 - 1. Subtenant shall, at its expense, maintain the premises in a first-class condition, ordinary wear and tear excepted as conditions and the Tenant and the CEO or his authorized representative may require, including but not limited to redecoration, painting and repair and replacement of damaged or worn furnishings and equipment, and maintenance, repair and replacement of life safety, fire detection, fire suppression and fire monitoring systems.
 - 2. Subtenant will make all necessary and appropriate repairs and replacements thereof promptly and in a good and workmanlike fashion without diminishing the original quality of such Improvements;
 - 3. Subtenant covenants and agrees that all maintenance, repair and replacement shall be completed with due diligence and in a good and workmanlike fashion and in compliance with all conditions imposed by the

City and all applicable permits, authorizations, laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction and that the costs and expenses with respect to such maintenance, repair and replacement shall be paid promptly when due and that the maintenance, repair and replacement shall be accomplished free of liens of mechanics and materialmen. Subtenant further covenants and agrees that the costs and expenses incurred by the City or the Tenant for any maintenance, repair and replacement to the Subtenant's Technical Support Space required as a result of a failure of Subtenant to perform such maintenance, repair or replacement plus 20% of such costs and expenses for overhead expenses shall be reimbursed by Subtenant to Tenant or to the City as the case may be upon Tenant's or the City's written demand.

- C. The Tenant and the CEO or his authorized representative shall have the right to make reasonable objections regarding the maintenance and appearance of the Subtenant's Technical Support Space. Subtenant agrees to promptly discontinue or commence to remedy any objectionable condition within its control within five (5) business days after written notice by the Tenant or the CEO or his authorized representative.

7.07 WINDOW WASHING AND STRUCTURAL MAINTENANCE

The City has agreed with the Tenant that the City shall, at its expense, provide exterior window washing and maintain all structural parts of the Terminal and Concourses, including exterior glass, walls and roof but specifically excluding any other Concession Improvements made by Subtenant.

7.08 COMMON USE SERVICES

The CEO may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling and security guards. The CEO reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer, recycling and deliveries will be common use services which Subtenant may be required to use and pay its prorata actual share; however, other common use services may be utilized at Subtenant's option. Subtenant agrees to timely pay the charges for those common use services which are utilized by Subtenant.

7.09 INTERRUPTION OF SERVICES

Subtenant agrees that neither Tenant nor the City shall be liable for failure to supply any utility services. In Tenant's Lease with Tenant, the City reserves, and Tenant hereby reserves for itself, the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of Tenant or the City. Neither Tenant nor the City shall be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Subtenant from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

SECTION 8 – INDEMNITY, INSURANCE AND GUARANTEES

8.01 INDEMNITY

Subtenant hereby agrees to release and indemnify and save harmless Tenant and the City, their officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of Tenant and the City, and shall defend, indemnify and save harmless Tenant and the City, their officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, its construction of the Concession Improvements, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents of the Subtenant; provided, that the Subtenant shall not release, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees and Subtenant need not release, indemnify or save harmless the Tenant, its officers, agents and employees from damages resulting from the sole negligence of the Tenant's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Subtenant hereunder.

8.02 INSURANCE

Subtenant further agrees to secure at its own expense and to keep in force at all times during the Term hereof, the following insurance:

- A. Comprehensive General Liability Insurance. A comprehensive general liability insurance policy written on an occurrence basis and including coverage for premises/operations, products, contractual, independent contractors, broad form property damage, personal liability, and fire legal liability, in the amount specified in the Summary Page, and in **Exhibit C**, which amount may be adjusted in the CEO's sole discretion at any time during the Term of this Sublease. This policy shall cover the obligations assumed by Subtenant hereunder and shall name and endorse Tenant and the City as additional named insureds. This policy shall be at least as broad as ISO CG 0001 (10/93) and shall include defense costs for additional insureds outside the limits of insurance. This policy shall not contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease, or death of any employee of Subtenant or any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement.
- B. Business Auto Liability Insurance. A business auto and delivery vehicle liability insurance policy which includes coverage for owned, non-owned and hired vehicles in the amount specified in the Summary Page and in **Exhibit C**, which amount may be adjusted in CEO's sole discretion, in a combined single limit for damage or bodily injury, including wrongful death, as well as claims for property damage, which may arise from the ownership, use, or maintenance of owned or

non-owned vehicles, including rented vehicles, and including their use on or off City property or by City personnel.

- C. Workers Compensation Insurance. Subtenant shall maintain at all times adequate worker's compensation insurance (including occupational disease hazards) with an authorized insurance company, or through the Colorado State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Colorado, insuring the payment of compensation to all its employees.

Certificates evidencing the existence of the policies, in such form as the CEO and the Tenant may require, shall be delivered to Tenant and the Airport Property Management Section prior to the Rent Commencement Date as defined in Section 5.03. The current form required is attached hereto as **Exhibit C**. Upon request by Tenant or the CEO, Subtenant agrees to furnish to the Tenant and/or the Airport Property Management Section at any time thereafter during the Term of this Sublease the original or a certified copy of said policy or policies.

Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled, or materially changed or altered, without first giving 45 days prior written notice, or 10 days' notice for nonpayment of premium, to (i) the City's CEO, Denver International Airport, 8500 Peña Boulevard, Denver, Colorado 80249-6340, and (ii) Skyport Development Company, LLC, 4100 East Mississippi Avenue, Suite 1400, Denver, Colorado 80246. Such notices shall be sent by certified mail, return receipt requested."

Each such policy or certificate shall further provide that any coverage afforded Tenant and the City as additional insured shall apply as primary insurance and other insurance issued to the City and/or Tenant shall apply as excess and non-contributing insurance.

A renewal certificate shall be delivered to Tenant and the Airport Property Management Section at least 10 days prior to a policy's expiration date, except for any policy expiring after the Expiration Date of this Sublease or any extension thereof.

If at any time any of the insurance policies shall be or become unsatisfactory to the Tenant or the City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Tenant or the City, Subtenant shall promptly obtain a new and satisfactory replacement policy.

8.03 SECURITY DEPOSIT

Upon execution of this Sublease, Subtenant shall deliver to Tenant, and maintain in effect at all times throughout the Term a Security Deposit, in an amount set forth on the Summary Page. Such Security Deposit shall guarantee to the Tenant full and faithful performance by Subtenant of (i) all of the terms and provisions of this Sublease to be performed by Subtenant, as this Sublease may be amended, substituted, supplemented or extended, and (ii) all obligations and duties of Subtenant under all general rules and regulations adopted by the City or the CEO for the management, operation and control of the Airport as amended or supplemented. At its option, Subtenant may provide an irrevocable letter of credit

in the amount of the Security Deposit or some other form of surety reasonably acceptable to the Tenant, instead of providing cash as the Security Deposit.

Notwithstanding the foregoing, if at any time during the term hereof, Tenant deems the amount of the Security Deposit insufficient to properly protect Tenant from loss hereunder because Subtenant is or has been in arrears with respect to such obligations or because Subtenant has, in the opinion of Tenant, violated other terms of this Sublease, Subtenant agrees that it will, after receipt of notice, increase the Security Deposit to an amount required by Tenant; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to Subtenant's Minimum Annual Guarantee in effect under this Sublease.

8.04 NO PERSONAL LIABILITY

Except as may be provided in a separate guaranty, no director, officer, manager, member, or employee of either party hereto shall be held personally liable under this Sublease or because of its execution or attempted execution.

8.05 TAXES, LICENSES, LIENS AND FEES

Subtenant agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Subtenant's Technical Support Space and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Subtenant also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Subtenant's Technical Support Space or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Subtenant agrees to furnish to Tenant or the CEO, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Subtenant further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Subtenant's Technical Support Space or improvements thereon which will in any way impair the rights of the Tenant or the City under this Sublease.

SECTION 9 – DEFAULT AND REMEDIES

9.01 DEFAULT

Subtenant shall be in default under this Sublease (each such event is referred to herein as an "Event of Default") if Subtenant:

- A. Fails to timely pay when due to Tenant the compensation or any other payment required hereunder; or

- B. Is in default under any other Agreement with Tenant or the City for Technical Support Space at the Airport; or
- C. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or
- D. Transfers its interest under this Sublease, without the prior written approval of the Tenant and the CEO, whether by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation; or
- E. Fails to timely submit plans and specifications, bonds and other preconstruction submittals, fails to promptly begin or timely complete construction of Improvements, fails to open for business to the public when construction is completed, or fails to occupy and use Subtenant's Technical Support Space after construction is completed; or
- F. Abandons, deserts or vacates the Subtenant's Technical Support Space, or fails to operate the concession; or
- G. Suffers any mechanic's or materialman's lien or attachment adverse to the City or the Tenant to be filed against Subtenant's Technical Support Space, or any lien or attachment, including but not limited to mechanic's or materialman's liens, to be filed against the Tenant's property, the Airport or the City's property because of any act or omission of Subtenant, and such lien or attachment is not discharged or contested by Subtenant in good faith by proper legal proceedings within 20 days after receipt of notice thereof by Subtenant; or
- H. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Sublease and such failure continues for a period of more than 30 days after delivery by Tenant of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Subtenant within 10 days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or
- I. Uses, or gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Subtenant for its use under this Sublease.

9.02 REMEDIES

Upon Subtenant's failure to cure an Event of Default within the notice and cure provision of this Sublease, Tenant may exercise any one or more of the following remedies:

- A. Tenant may elect to allow this Sublease to continue in full force and effect and to enforce all of Tenant's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with Past Due Interest.

- B. Tenant may (or at the written request of the CEO, Tenant shall) cancel and terminate this Sublease and repossess the Subtenant's Technical Support Space, with or without process of law, and without liability for so doing, upon giving 30 days written notice to Subtenant of its intention to terminate, at the end of which time all the rights hereunder of the Subtenant shall terminate, unless the default, which shall have been stated in such notice, is by its nature curable and shall have been cured within such 30 days. Notwithstanding the foregoing, Subtenant shall be allowed only two notices of curable default hereunder which it may cure within the time specified in this section. At the option of the Tenant, the third notice shall be final and Tenant may, at its option, (1) cancel and terminate all of the rights hereunder of the Subtenant, reenter the Subtenant's Technical Support Space, remove therefrom all property of the Subtenant and store the same at the expense of the Subtenant, or (2) elect to proceed under subparagraph C below. If Tenant elects to terminate, Subtenant shall be liable to Tenant for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate Tenant for all loss of compensation, damages, and costs, including attorney's fees, caused by Subtenant's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom. Nothing in this Section 9.02 shall be construed to grant a right to Subtenant to cure a default which by its nature is not capable of being cured.
- C. The Tenant may elect to reenter and take possession of the Subtenant's Technical Support Space and expel Subtenant or any person claiming under Subtenant, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Sublease unless a written notice from Tenant specifically so states; however, Tenant reserves the right to terminate the Sublease at any time after reentry. Following reentry, Tenant may re-let the Subtenant's Technical Support Space, or any portion thereof, for the account of Subtenant, on such terms and conditions as Tenant may choose, and may make such repairs or improvements as it deems appropriate to accomplish the re-letting. The Tenant shall not be responsible for any failure to re-let or any failure to collect compensation due for such re-letting. Subtenant shall be liable to Tenant for all costs of re-letting, including attorney's fees and repairs or improvements. Notwithstanding re-entry by Tenant, Subtenant shall continue to be liable for all amounts due as compensation under this Sublease, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the Sublease by the Tenant, having credited to the account of Subtenant any amounts recovered through re-letting, shall refund, without interest, any amount which exceeds the compensation, damages and costs payable by Subtenant under this Sublease.

9.03 REMEDIES CUMULATIVE

The remedies provided in this Sublease shall be cumulative and shall in no way affect any other remedy available to the Tenant or under law or equity.

9.04 WAIVERS

No failure of Tenant to insist upon the strict performance of a term, covenant or

agreement contained in this Sublease, no failure by Tenant to exercise any right or remedy under this Sublease, and no acceptance of full or partial payment during the continuance of any default by Subtenant shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Subtenant.

SECTION 10 – DAMAGE, DESTRUCTION OR LOSS

10.01 DAMAGE TO OR DESTRUCTION OF SUBTENANT TECHNICAL SUPPORT SPACE

If Subtenant's Improvements, or any portion thereof, are destroyed or damaged by fire, the elements or otherwise, the Subtenant shall promptly remove all debris resulting from such damage to the Improvements and shall at its sole cost and expense repair and/or reconstruct the Improvements with due diligence in accordance with the plans and specifications for the Subtenant's Technical Support Space as they existed prior to such damage or according to the current needs of the Subtenant as approved by the Tenant and the City.

If the Subtenant's Technical Support Space, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, the City and/or the Tenant may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Subtenant, the obligation of Subtenant to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within 90 days after the destruction or damage, which Tenant will promptly provide to Subtenant. Subtenant may then, at its option, cancel and terminate this Sublease.

10.02 COOPERATION IN THE EVENT OF LOSS

If the City elects to rebuild, Subtenant must replace all Improvements at its sole cost and in accordance with the Required Minimum Investment, subject to escalation according to the Engineering News Record Building Cost Index for the Denver, Colorado area and performance standards as set forth in the Exhibit entitled Provisions for Design and Construction of Improvements. Tenant, and Subtenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

10.03 LOSS OR DAMAGE TO PROPERTY

Neither Tenant nor the City shall be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Subtenant agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this section.

10.04 MUTUAL WAIVER; INSURANCE COVERAGE

Tenant and Subtenant each waive any and every claim for recovery from the other for any and all loss of or damage to the Subtenant's Technical Support Space or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Subtenant agrees to give to each insurance company which has issued, or may issue, to the Subtenant policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

10.05 RELEASE

Subtenant agrees that neither Tenant nor the City shall be liable to Subtenant for any injury to or death of any of the Subtenant's agents, representatives or employees or of any other person or for any damage to any of Subtenant's property or loss of revenue caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport, whether such injury, death or damage is due to negligence or otherwise.

SECTION 11 – RESERVED

SECTION 12 – MISCELLANEOUS PROVISIONS

12.01 AGREEMENT BINDING UPON SUCCESSORS

This Sublease, subject to the provisions of the section entitled "Assignment," shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

12.02 AGREEMENT MADE IN COLORADO

This Sublease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

12.03 AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES AND THE CITY

This Sublease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system.

Subtenant covenants and agrees, for the benefit of Tenant and City, that it shall not, by its use and occupancy of the Subtenant's Technical Support Space, violate any of the provisions of Tenant's Lease as such Lease has been and/or may from time to time be amended or cause Tenant to be in default thereof. Subtenant

further covenants that this Sublease shall be, in all respects, subject and subordinate to Tenant's Lease and any mortgages or other lien instruments that may affect Subtenant's Technical Support Space or Tenant's interest therein, and shall not be deemed to confer upon Subtenant any rights which are not granted by or are in conflict with Tenant's Lease. Notwithstanding anything contained herein, (a) this Sublease shall not be deemed to grant to Subtenant any rights or privileges which Tenant does not have under Tenant's Lease, and (b) any act or omission of Tenant required by Tenant's Lease shall in no event be deemed a violation of this Sublease.

This Sublease is subject and subordinate to the security interest of any lender ("Lender") in Tenant's Lease and/or Tenant's interest in Subtenant's Technical Support Space and Subtenant shall execute and deliver upon demand of Tenant or Lender any and all instruments subordinating this Sublease, in the manner requested by Tenant, to any new or existing security interest in Tenant's Lease or Tenant's interest in this Sublease. Lender shall agree that it shall not disturb Subtenant's possession of the Subtenant's Technical Support Space, provided that Subtenant is not in default under the terms and conditions of this Sublease. If a Lender has agreed not to disturb Subtenant's possession of the Subtenant's Technical Support Space, Subtenant shall attorn to any party succeeding to Tenant's interest in this Sublease, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, acceptance of any conditional assignment of this Sublease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

If Lender shall succeed to the interest of Tenant under this Sublease, Lender shall not be: (1) liable for any act or omission of Tenant; (2) bound by any rent or additional rent or advance rent which Subtenant might have paid for more than one (1) month in advance to Tenant, and all such rent shall remain due and owing, notwithstanding such advance payment; (3) bound by any security or advance rental deposit made by Tenant which is not delivered or paid over to Lender and with respect to which Subtenant shall look solely to Tenant for refund or reimbursement of amounts paid to it; (4) bound by any termination, amendment or modification of this Sublease made without Lender's consent and written approval; (5) subject to the defenses which Subtenant might have against Tenant; and (6) subject to the offsets which Subtenant might have against Tenant.

Further, Subtenant shall at any time and from time to time, upon not less than ten (10) days prior written notice from Tenant, Lender or a successor thereto, execute, acknowledge, and deliver to Tenant, and/or Landlord as applicable, a statement in writing certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified, is in full force and effect) and the dates to which rent and other charges are paid in advance, if any, and acknowledging that there are not, to Subtenant's knowledge, any uncured defaults on the part of the Tenant hereunder, or specifying such defaults, if any are claimed, or acknowledging to Lender that Subtenant will not modify or amend this Sublease without consent of such Lender as to such other matters Tenant may reasonably request. In the event that Tenant or its principal with the City's consent, sells, assigns, conveys, transfers or grants the Tenant's Lease to any person, firm, corporation, company, or entity during the

term hereby demised, Subtenant agrees to attorn to such new owner, and Tenant and its principals, agents and owners shall be released from performance hereunder.

12.04 ASSIGNMENT

Except as may be provided in a Non Disturbance and Attornment Agreement by and between the City and Subtenant, this Sublease is subject to and subordinate to Tenant's Lease. Subtenant covenants and agrees not to assign, pledge, transfer or sublet its rights in this Sublease, in whole or in part, nor grant any license or concession hereunder, without the prior written consent of Tenant and the CEO. Any attempt by the Subtenant to assign or in any way transfer its interest in this Sublease, in whole or in part, directly or indirectly (including any attempt to transfer the ownership of the equity or control of Subtenant or Subtenant's operations), without the prior written consent of Tenant and the CEO shall, at the option of Tenant and the CEO, automatically terminate this Sublease and all rights of the Subtenant hereunder. Such consent may be granted or denied in the sole and absolute discretion of the Tenant and the CEO.

12.05 BOND ORDINANCES

This Sublease is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances which should amend, supplement or replace such bond ordinances. The parties to this Sublease acknowledge and agree that all property subject to this Sublease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Subtenant agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Subtenant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Sublease) not to claim depreciation or an investment credit with respect to any property subject to this Sublease which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

12.06 FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Sublease due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Subtenant to reduce, delay or abate its obligation to pay the Minimum Annual Guarantee or Percentage Compensation Fee herein, or any other compensation due hereunder.

12.07 INCONVENIENCES DURING CONSTRUCTION

Subtenant recognizes that from time to time during the Term of this Sublease, it may be necessary for the City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be maintained, improved, and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Subtenant in its operation at the Airport. Subtenant agrees that no liability shall attach to Tenant, the City, or their officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Subtenant waives any right to claim damages or other consideration therefrom.

12.08 MASTER PLAN

Subtenant agrees that no liability shall attach Tenant, the City, or their officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport, and waives any right to claim damages or other consideration arising therefrom.

12.09 NONDISCRIMINATION

In connection with the performance of work under this Sublease, Subtenant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and Subtenant further agrees to insert the foregoing provision in all subcontracts hereunder.

12.10 NOT PARTNERSHIP

Notwithstanding the provisions herein for payment by Subtenant to Tenant of sums based upon a percentage of Gross Revenues, it is expressly understood and agreed that the Tenant shall not be construed or held to be a partner, associate or joint venturer of Subtenant in the conduct of its business. Subtenant shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon Tenant or the City.

12.11 NOTICES

All notices required to be given to Tenant, the City or Subtenant hereunder shall be in writing and sent by certified mail, return receipt requested, as follows:

to Tenant: Skyport Development Company, LLC
8231 East Prentice Avenue
Greenwood Village, CO 80111

to City: Chief Executive Officer
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Boulevard
Denver, CO 80249-6340

with a copy to: Airport Property Management Section
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Boulevard
Denver, CO 80249-6340

to Subtenant: At the address and to the attention of the person
so designated on the Summary Page.

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to the intended party.

12.12 PARAGRAPH HEADINGS

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Sublease.

12.13 PATENTS AND TRADEMARKS

Subtenant represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Sublease. Subtenant will not utilize any protected patent, trademark or copyright, including any patents, trademarks or copyrights owned by Tenant or the City, in its operations under this Sublease unless it has obtained proper permission and all releases and other necessary documents. Subtenant agrees to save and hold harmless Tenant and the City, their officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Subtenant under this Sublease.

12.14 SECURITY

Subtenant shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City or the Transportation Security Administration (TSA), including 49 CFR Subtitle B, Chapter XII, as amended from time to time.

12.15 SEVERABILITY

If any provision in this Sublease is held by a court of competent jurisdiction to be invalid, the validity of other provisions herein which are severable shall be unaffected.

12.16 THIRD PARTIES

This Sublease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties except any permitted successor or assignee, any right to claim damages or to bring any suit, action or other proceeding against

Tenant, the City or the Subtenant because of any breach hereof or because of any failure to comply with of any of the terms, covenants, agreements and conditions herein.

12.17 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

Subtenant, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Except as otherwise may be provided herein, Subtenant shall also prohibit consumption of alcohol within the Subtenant's Technical Support Space. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Subtenant from City facilities or participating in City operations.

12.18 CITY SMOKING POLICY

Subtenant agrees that it will prohibit smoking by its employees and the public in the Subtenant's Technical Support Space and will not sell or advertise tobacco products. Subtenant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. Subtenant and its officers, agents and employees shall cooperate and comply with the provisions of the City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et. seq.

12.19 ENTIRE AGREEMENT

The parties acknowledge and agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved to the Tenant herein, shall be valid unless executed by an instrument in writing by all the parties and approved by the CEO with the same formality as this Sublease.

12.20 FINAL APPROVAL

This Sublease is expressly subject to, and shall not be or become effective or binding until approved by the CEO and a Non Disturbance and Attornment Agreement is approved by the City Council and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day and year first above written.

"TENANT"
SKYPORT DEVELOPMENT COMPANY, LLC

"SUBTENANT"
DIA TECH SERVICES, LLC

By 
Title Member

By 
Title Member

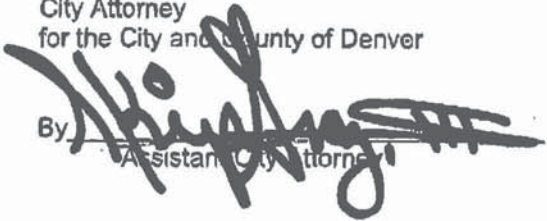
Pursuant to Tenant's Lease between the Tenant and the City and subject to the condition that the parties enter into and submit a Non Disturbance and Attornment Agreement for approval by City Council, the Chief Executive Officer of Denver International Airport, hereby gives her consent to this Sublease.

Dated this _____ day of _____, 2017.

APPROVED AS TO FORM:

"CITY"
CITY AND COUNTY OF DENVER

City Attorney
for the City and County of Denver

By 
Assistant City Attorney

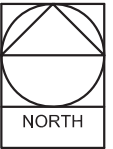
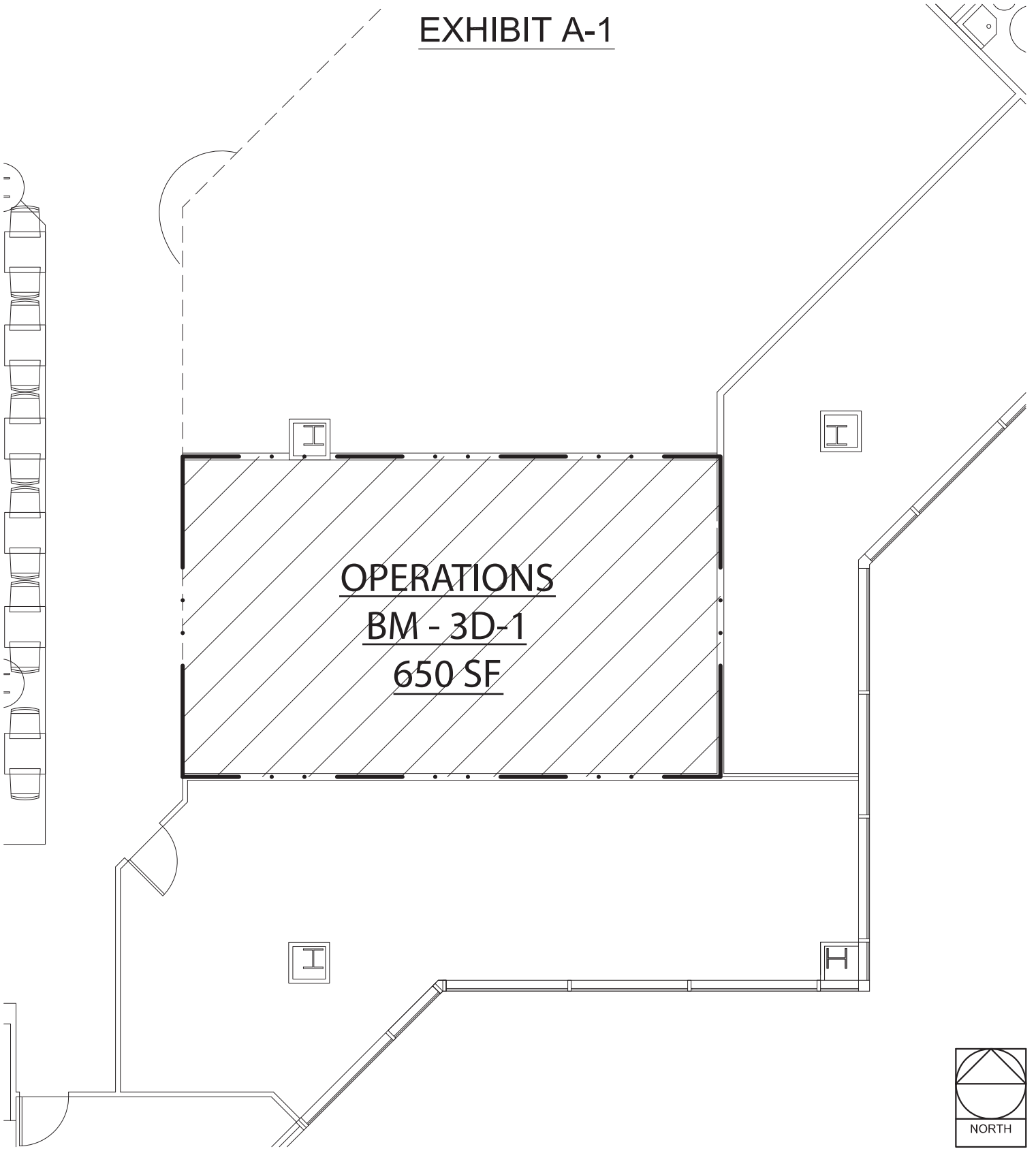
By _____
Chief Executive Officer, Denver
International Airport

Non Disturbance and
Attornment Agreement
Contract Control No.
201735988-00

EXHIBIT A

SUBTENANT TECHNICAL SUPPORT SPACE PLAN

EXHIBIT A-1



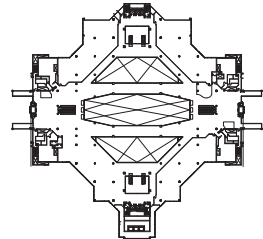
INLINE SPACE

DENVER INTERNATIONAL AIRPORT CONCOURSE B
MEZZANINE LEVEL

8900 PENA BLVD.
DENVER, CO
80249

01.04.2017

SCALE = NOT TO SCALE



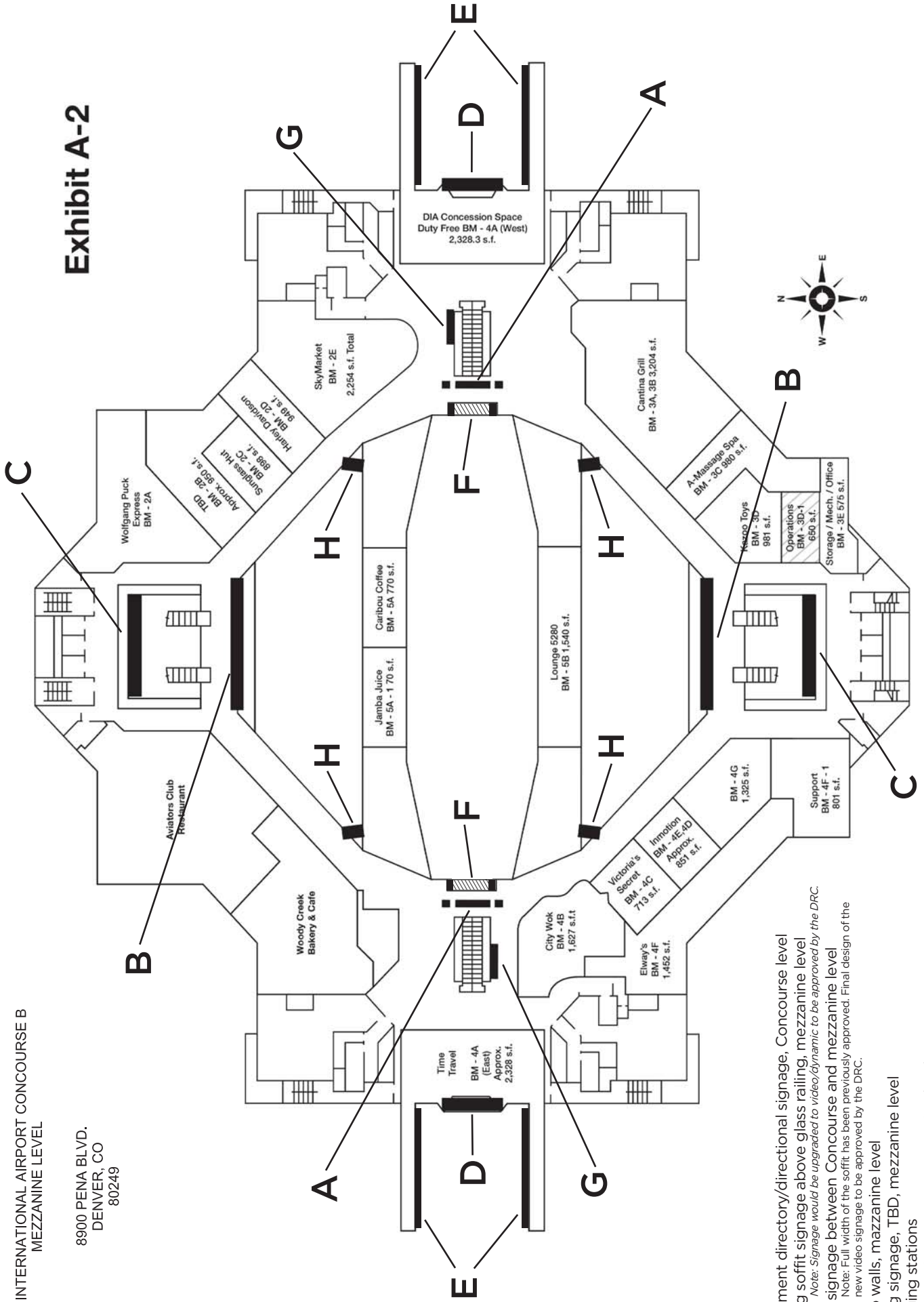
KEY PLAN CONCOURSE B MEZZ.

VIDEO WALLS

DENVER INTERNATIONAL AIRPORT CONCOURSE B
MEZZANINE LEVEL

8900 PENA BLVD.
DENVER, CO
80249

Exhibit A-2



- A.** Monument directory/directional signage, Concourse level
- B.** Ceiling soffit signage above glass railing, mezzanine level
Note: Signage would be upgraded to video/dynamic to be approved by the DRC.
- C.** Soffit signage between Concourse and mezzanine level
Note: Full width of the soffit has been previously approved. Final design of the new video signage to be approved by the DRC.
- D.** Video walls, mezzanine level
- E.** Railing signage, TBD, mezzanine level
- F.** Charging stations
- G.** Flight monitors (FIDS), mezzanine level
- H.** Corner Soffit Signage between Concourse and mezzanine level

EXHIBIT C – include information related to Tenant

EXHIBIT D

Form of Non Disturbance and Attornment Agreement

EXHIBIT X

PROVISIONS FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS

GENERAL PROVISIONS

SECTION 1: GENERAL. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit X to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or any exhibit thereto. Reference to Denver International Airport (DIA), Department of Aviation or CEO shall mean that entity specifically, or that division or individual authorized to represent that entity. Reference to Tenant shall include "Concessionaire" as the context requires.

SECTION 2: IMPROVEMENTS. "Improvements," which may also be known as "Concession Improvements" or "Tenant Improvements," shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Tenant, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture which conform to drawings and specifications approved in writing by the CEO. Such drawings and specifications must provide for the necessary and proper operation of the business contemplated under this Agreement.

SECTION 3: COMPLIANCE WITH LAWS AND REGULATIONS. Tenant agrees to comply with and require its contractors to comply with all applicable federal, state and local laws and all general rules and regulations applicable to construction at DIA, including but not limited to payment of prevailing wages and sales and use taxes, compliance with the Americans with Disabilities Act, 42 USC 12,000 et seq. and its regulations.

In addition to the above, the Tenant and its contractors shall comply with all DIA specific rules and regulations regarding site access, use of site, safety, security, design and construction and shall obtain and pay for all related permits. Failure to comply will be grounds for denial of access and/or suspension of construction activities. Regulations in force specific to DIA include but are not limited to the following:

The Denver Municipal Airport System Rules and Regulations

DIA Design Standards

DIA Tenant Development Guidelines

SECTION 4: PAYMENT OF PREVAILING WAGE RATES. Tenant shall require its contractor and all of its subcontractors to pay every worker, laborer or mechanic employed by them in the performance of the construction of the Improvements prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and the Tenant shall require the contractor to submit with its bid the wage schedule applicable. The contractor shall post in a prominent and easily accessible place at the site of the Improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Mayor's Office of Contract Compliance and to the Auditor, or his authorized representative, each week during which work is

in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the contractor that the copy is a true and correct copy of the payroll records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 5-18(d), Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, hereinabove set forth, shall result in an order from the CEO for the work to cease until there is satisfactory evidence that the violation has been remedied and will not reoccur. The issuance of a stop-work order shall not relieve contractor's surety of any liability on contractor's bond or bonds, but such a stop-work order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

SECTION 5: SBE PARTICIPATION.

Tenant agrees that it shall provide for participation of Small Business Enterprises (SBEs) in the design and construction of Improvements, in compliance with Article VII, Division 1 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), or any successor ordinance effective at the time of any design and construction which Tenant may carry out during the life of this Agreement. The goal for percentage of design and construction work to be performed by SBE firms is set forth on the Construction Summary Page, and Tenant shall make a good faith effort to meet such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize SBEs and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

SECTION 6: INSURANCE REQUIREMENTS. Refer to Appendix B of Manual 1 of the DIA Tenant Development Guidelines for insurance requirements for Tenant, Tenant's Design Consultants and Tenant's Contractors for required insurance coverage for design and construction of Improvements and completed Improvements, including requirements for submittal of certificates and renewals of insurance.

SECTION 7: EVIDENCE OF INSURANCE. Certified copies of required insurance policies, or certificates, in the standard form required, evidencing the existence thereof, or binders, shall be delivered to the DIA Division of Planning and Development at least 15 days prior to the commencement of any design work to be performed by Tenant's consultants and any construction work for Improvements. If a binder is delivered, it shall be replaced within 30 days by a certified copy of the policy or the required certificate. Policies shall be in a form and of a company acceptable to and approved by the City, and certificates shall be on standard City and County of Denver Certificate of Insurance forms.

Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without 45 days prior written notice (10 days for nonpayment of premium) given by certified mail, return receipt requested, to the CEO, 8500 Peña Boulevard, Denver, Colorado 80249-6340.

Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policy shall apply as primary insurance and any

other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance.

Any renewal certificate shall be delivered to the CEO at least 10 days prior to the expiration of each expiring policy. If at any time any of the insurance policies shall be or become unsatisfactory to the CEO as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the CEO, Tenant shall promptly obtain a new and satisfactory replacement policy.

SECTION 8: LIMITATION ON LIABILITY. Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the Improvements or other Improvements to the Tenant's site made by the Tenant. Tenant agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas, travelers, other businesses or airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. Tenant agrees to indemnify, defend and hold harmless the City from any loss, cost, damage or expense incurred, claimed, asserted or arising in connection with Tenant's or its contractors' or agents', construction or installation of the Improvements or other Improvements to the site made by the Tenant.

DESIGN PROVISIONS

SECTION 9: DESIGN PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding design, including but not limited to design process and schedule, submittal requirements, review and approval process, design modifications and project coordination.

Approval of the CEO extends to and includes consideration of architectural, structural, mechanical, electrical, specialty systems, site, signage, landscaping and aesthetic matters, and DIA reserves the right to reject any design submitted and to require Tenant to resubmit designs and layout proposals until they meet with the approval of the CEO. No substantial changes or alterations shall be made in said drawings or specifications after approval by the CEO, and no alterations or improvements shall be made to or upon the Tenant's site without prior approval.

Tenant CADD Submittal Requirements: All issue for construction and project record drawings shall be provided by the tenant to DIA in AutoCAD Rel. 14 or 2000 .dwg file format in accordance with DIA CADD standards set forth in Design Standards Manual 1. All design drawings submitted by the Tenant to the DIA shall be provided in the latest release of AutoCAD format in accordance with the DIA's Design Standards Manual.

Concession CADD Submittal Requirements: AutoCAD Rel. 14 or 2000 .dwg format CADD files that match the tenant's hardcopy drawings must be submitted via: CD-ROM, 3.5" disk, IOMEGA Zip/JAZZ (1 GB) disk in MS-Windows format. All drawings must represent precision input and follow industry standard CADD practices. The drawings must reflect true design dimensioning and must NOT be graphic representations of the design. All site, civil and utility drawings MUST be produced using units in feet and the DIA Grid Coordinate System. The DIA project manager must approve submittal and may require adherence to the requirements set forth in DIA design standards.

In addition to the above, Tenant is responsible for coordination with the Denver Building

Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, Health and Hospitals, etc. as may be required to comply with submittal, review and approval requirements in order to obtain all required permits. Prior to the issuance of a Notice to Proceed with Improvements from the CEO , the Tenant shall obtain and pay for all approvals, licenses and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the most stringent law or regulations applicable to this Agreement shall control.

SECTION 10: DESIGN STANDARDS. First-class standards of design and construction are required, and all Improvements shall conform to applicable statutes, ordinances, building codes, and regulations as well as the DIA Design Standards and DIA Tenant Development Guidelines, as they may be amended from time to time, and any other applicable design, construction, and maintenance standards.

Approval of the CEO shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Tenant to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Tenant shall promptly submit necessary modifications and revisions thereof. The approval given by the CEO shall not constitute a representation or warranty as to such conformity; therefore, responsibility remains with the Tenant at all times.

CONSTRUCTION PROVISIONS

SECTION 11: CONSTRUCTION PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding construction, including but not limited to construction schedule, submittal requirements, review and approval process, construction inspections, construction modifications and project coordination.

Compliance with standards: All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the Improvements are constructed and installed in full compliance with the plans and specifications.

Standard of Performance: All work done by the Tenant or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between State or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this agreement shall control.

City Inspection: All construction work, materials, and installations involved in or incidental to the construction of the improvements undertaken by the Tenant throughout the term hereof shall be subject at all times to inspection and approval by the City. DIA shall at all times have the right of access to the construction site and to monitor and inspect the construction of all Improvements to insure that all Improvements are constructed and installed in compliance with approved drawings and specifications.

DIA shall have the right to halt construction of the Improvements or deny access to the site at any

time if construction is at material variance from the approved drawings and specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.

In order to assist DIA in monitoring and inspecting construction, the Tenant shall submit, or cause to be submitted for information and record, copies of all field test reports, certificates of insurance, waivers of liens, material certificates, shop drawings and submittals for review for compliance with DIA design and construction standards, contractor application for payment requests, construction progress reports, notification of substantial completion of Improvements and final acceptance, two copies of maintenance and operation manuals in connection with building systems and all updates thereof, as-built documents, and any other documents related to the construction of the Improvements which may be reasonably requested by DIA.

No change order or other contract modification which materially changes the scope of the Improvements shall be executed without prior approval of the CEO, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve, or disapprove submissions of change orders which materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

The Building Inspection Division of the City and County of Denver shall also receive copies of all change orders. Any conditional approval or disapproval shall be accompanied by an explanation of the reasons.

Tenant is responsible for all temporary utilities required during construction. Tenant, at its sole cost and expense, shall obtain and make utility connections, hook-ups or taps as necessary or as stipulated in this Agreement, securing all necessary applications or permits and paying all associated fees. Tenant, at its sole cost and expense, shall provide meters, calibrated by the utility company, and maintain equipment as required to provide accurate measurement of usage and consumption. DIA makes no warranty as to the location of structures, wiring, fixtures or systems, and Tenant accepts them on an "as is" basis without further recourse against DIA as to their location, number or suitability for the particular purposes of the Tenant.

Tenant is responsible for maintaining a clean, orderly and safe construction site, free of accumulated construction debris and waste materials and shall be responsible for legal removal of same. Construction shall be accomplished without interfering with travelers, airport operations or other businesses, providing barricades and/or construction enclosures as required.

SECTION 12: CONSTRUCTION BONDS AND PERMITS. Prior to Notice to Proceed with construction Improvements, Tenant and its contractor shall deliver to the CEO performance and payment bonds and copies of all required permits, licenses and all other documents as required by Manual 1 of the DIA Tenant Development Guidelines.

SECTION 13: MODIFICATIONS AND ALTERATIONS. Modifications and alterations to existing tenant improvements are subject to the same requirements and provisions as new tenant improvements as itemized in this Exhibit X and the Lease Agreement.

Advance Notice of Modification: The Tenant shall give or cause to be given to the City advance

notice before performing any material modification to the improvements.

Expense of Alterations. Any work necessary to make any alterations, improvements, or additions to the facility throughout the term of this Agreement shall be done at the Tenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.

SECTION 14: AS-BUILT DOCUMENTS. Not later than 60 days after completion of all work for the Improvements, Tenant shall provide DIA two complete sets of as-built documents prepared in accordance with DIA requirements. If Tenant fails to provide as-built documents after written notice from DIA, DIA may elect to have the documents completed and charge the Tenant for the costs associated therewith. Tenant agrees that, upon the request of DIA, Tenant will inspect the Improvements jointly with DIA to verify as-built documents.

APPENDIX A

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Concessionaire, and the term "sponsor" shall mean the "City."

During the term of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations.** The Contractor will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor will provide all information and reports required by the Acts, Regulations, or directives issued pursuant thereto and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate including, but not limited to:

- a. Withholding of payments to the Contractor under this Agreement until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for

noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, MAINTENANCE, OPERATION OF FACILITIES

As used below, the term “sponsor” will mean City.

Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of consideration hereof, does hereby covenant and agree, as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities, as may be amended from time to time, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, sponsor will have the right to terminate this Agreement, and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

APPENDIX D

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, USE, OR ACCESS TO FACILITIES

As used below, the term "sponsor" will mean City.

- A. Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.

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

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "Contractor" will mean and include Concessionaire and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 1 00-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high

and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

APPENDIX 1

DISADVANTAGED BUSINESS ENTERPRISES- REQUIRED STATEMENTS

As used below, the term "Contractor" will mean and include Concessionaire, and the term "sponsor" will mean City.

Contract Assurance (§ 26.13) – The Contractor or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted Contracts.

Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) – The prime Contractor agrees to pay each subcontractor under this prime Contract for satisfactory performance of its Contract no later than thirty (30) days from the receipt of each payment the prime Contractor receives from Contractor. The prime Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the sponsor. This clause applies to both DBE and non-DBE subcontractors.

APPENDIX 2

ACDBE NONDISCRIMINATION AND ASSURANCE REQUIREMENTS

(1) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR part 23. Concessionaire or Contract agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management Contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) The Concessionaire or Contractor agrees to include the above statements in any subsequent concession agreement or Contract covered by 49 CFR part 23, that it enters and cause those business to similarly include the statements in further agreements.

APPENDIX 3

ACDBE/DBE POLICY AND OBJECTIVE STATEMENTS:

This part 23 seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

Policy Statement

Section 26.1, 26.23 Objectives/Policy Statement

City has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, City has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of City to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted Contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted Contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted Contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted Contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

DSBO has been delegated as the DBE Liaison Officer. In that capacity, DSBO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the sponsor in its financial assistance agreements with the Department of Transportation.

Sponsor has disseminated this policy statement to the City and County of Denver and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT -assisted Contracts.

CHIEF EXECUTIVE OFFICER

DATE