

SUBLEASE dated as of the      day of                      , 2019

B E T W E E N:

**MBJ AIRPORTS LIMITED**

- and -

**Date of Sub-Lease:**

**Airport:**    Sangster International Airport

**Description of Premises:**                      Lands identified on the plan attached as Schedule “C” comprising, in the aggregate, an area of ..... square feet or ..... square metres for Service Station and an area of ..... square feet or ..... square metres for Airside accessible refueling facility

**Brief Purpose:**                                      To be used as a site for constructing and operating a fuel receiving, storage, maintenance and retail distribution facility

**Commencement Date:**                              November 1, 2019

**Pre-Commencement Period:**                      Airside accessible facility - November 1, 2019 – January 31, 2020

**Service Station - November 1, 2019 - August 30, 2020** - Period from Commencement during which the Sub-lessee shall undertake construction of the Improvements on the Premises

**Duration of Term:**                                      Initial term - November 1, 2019 - March 31, 2033  
With option for possible extension of up to maximum of 25 years in total with approval from Airports Authority as Owner.

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BETWEEN:

- and -

WHEREAS by a Concession Agreement, dated April 3, 2003 and Property Leases No. 1 and No. 2 dated April 12, 2003 all between the Sub-lessor and Airports Authority of Jamaica (“AAJ”), the Sub-lessor became the manager, operator and lessee of the Airport;

AND WHEREAS the Sub-lessor has the authority and capacity to sublease and demise the Premises as contemplated herein;

AND WHEREAS the Sub-lessor and the Sub-lessee have agreed to enter into this sublease as of the date first written above, to be effective as of and from the Commencement Date;

In consideration of the mutual covenants set forth herein, the parties covenant and agree each with the other as follows:

## SECTION 1: BASIC TERMS, SCHEDULES, DEFINITIONS

## 1.1 Basic Terms

(a)	(i)	Owner	Airports Authority of Jamaica
		Sub-lessor:	MBJ Airports Limited
	(ii)	Address of Sub-lessor:	Sangster International Airport Main Terminal Building Montego Bay, Saint James Attention: Manager, Commercial Business Development & Marketing Telephone: 876 952 2712
(b)	(i)	Sub-lessee:	
	(ii)	Address of Sub-lessee:	Attention: Telephone No.:
(c)		Description of Premises:	The Premises comprise a part of the Airport Lands identified as Part 1 on the plan of survey attached as Schedule "C".
(d)		Estimated Total Ground Area comprising the Premises:	X square feet

(e)	(i)	Term:	Initial term <b>November 1, 2019 - March 31, 2033, with option for possible extension of up to maximum of 25 years in total with approval from Airports Authority as Owner.</b>
	(ii)	Commencement Date:	November 1, 2019
	(iii)	Pre-Commencement Period:	<b>Refueling Facility-Airside November 1, 2019 to March 29, 2020 Service Station - November 1, 2019 to August 30, 2020</b> Period Between Commencement Date and start date of business operations
	(iv)	Start Date of Business Operations:	<b>Refueling Facility - March 1, 2020 Service Station – September 1, 2020</b>
	(v)	Expiration Date of the Sub-Lease:	The Initial Term expires on March 31, 2033, and the extended term no later than possible extension 25 years from the Commencement Date.
(f)		Annual Base Rent (“ABR”):	Pursuant to See section 4.1 and Schedule "F", US \$..... per square foot per annum, being equal to US\$ per annum up to ..... Thereafter, ABR shall increase by the higher of 3% or United States Consumer Price Index at the commencement of each Lease Year.
(g)		Concession Fee:	Throughout the Term: (i) No less than XX % of Gross Revenue per annum on Fuel Products and Services throughout the Term (ii) No less than XX% Gross Revenue from food & beverage operations; and (iii) XX% of Gross Revenue per annum from sale of all other products and services from the Premises;

The parties agree that each reference in this Sub-Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Sub-Lease where such Basic Terms are more fully set forth.

### 1.2 Schedules

All schedules to this Sub-Lease, being Schedules “A” through “L”, inclusive, are incorporated into and form an integral part of this Sub-Lease. Without limiting the generality of the foregoing, the parties agree that those provisions referred to as “Additional Provisions” and being attached to this Sub-Lease as Schedule “G” constitute an integral part of this Sub-Lease.

### 1.3 Definitions

In this Sub-Lease, the words, phrases and expressions set forth in Schedule "B" are used with the meanings defined therein.

## **SECTION 2: GRANT OF SUB- LEASE**

### **2.1 Demise**

Subject to Section 2.3 below, the Sub-lessor, in accordance with its interest under the Head Lease, does hereby sublease and demise the Premises to the Sub-lessee for the Term upon and subject to the covenants and conditions hereinafter expressed.



## **2.2 Head Lease**

- (a) The Sub-lessee agrees that no privity of estate or privity of contract shall arise by virtue thereof as between the Sub-lessee and the AAJ. The Sub-lessor represents and warrants to the Sub-lessee that the execution and entering into this Sub-Lease by the Sub-lessor is not subject to or does not require the consent of any other third party.
- (b) The Sub-lessee acknowledges that title to the lands comprising the Airport is registered to the AAJ. The Sub-lessee agrees that this Sub-Lease and the leasehold interest of the Sub-lessee hereunder is subject to all terms and conditions of the Head Lease as such terms and conditions apply to the Premises; provided, however, nothing herein shall impose any obligation upon the Sub-lessee to comply with those provisions of the Head Lease which govern the obligations of the Sub-lessor in its role as the manager and operator of the Airport generally. The Sub-lessee further acknowledges that should the Sub-lessor default in its obligations under the Head Lease and should the Head Lease be terminated prior to the expiration of the Term, the AAJ has the option, in its sole and unfettered discretion, to require the Sub-lessee to attorn its interest hereunder to the AAJ, in which event, the Sub-lessee shall forthwith attorn such interest to the AAJ.
- (c) The Sub-lessor hereby agrees to pay the ABR and Concession Fee hereby reserved, and to observe and perform the covenants, agreements, conditions and provisions of the Head Lease on its part to be paid, observed and performed and to keep the Head Lease in good standing and to use reasonable commercial efforts to enforce its rights against the AAJ thereunder; but the Sub-lessor shall have no liability to the Sub-lessee for any breach of the Head Lease or any consequence thereof resulting from the Sub-lessee's act or neglect.
- (d) Throughout the whole of the Term, the Sub-lessor endeavours to continuously, actively, diligently and carefully manage, operate and maintain the Airport as an Aerodrome open to the public, in accordance with the Civil Aviation Act.

## **SECTION 3: TERM, COMMENCEMENT**

### **3.1 Term**

- (a) The Term of this Sub-Lease shall commence upon the Commencement Date and shall continue thereafter, unless sooner terminated pursuant to any other provisions hereof, until the Expiration Date of the Sub-Lease.
- (b) The parties hereto acknowledge and agree that in no event shall the Term of this Sub-Lease extend beyond March 31, 2033 unless and conditional upon the Sub-lessor being granted an extension or renewal of the Head Lease from the AAJ and provided the Term of this Sub-Lease is renewed in accordance with the provisions of section below. For greater certainty, the Sub-lessee acknowledges and agrees that the Sub-lessor shall be under no obligation whatsoever to seek any renewal or extension of the Head Lease and that the determination to seek any such extension or renewal of the Head Lease from the AAJ shall be at the sole and absolute discretion of the Sub-lessor.
- (c) The parties hereto further acknowledge and agree that all references in this Sub-Lease to "Term" shall refer to the period of time set out in paragraph 3.1(a) above.

### **3.2 Commencement Date**

The Term of this Sub-Lease shall commence upon the Commencement Date set forth in subsection 1.1(e) (ii).

### **3.3 Quiet Enjoyment**

The Sub-lessor covenants with the Sub-lessee for quiet enjoyment so long as the Sub-lessee is not in default hereunder (beyond applicable cure periods, if any) and except as provided herein.

### **3.4 License**

Subject to the provisions of the Sub-Lease, including, without limitation, the provisions of Schedule

“G”, the Sub-lessor, subject to the Head Lease, grants to the Sub-lessee, for the Term, as an appurtenant part of this Sub-Lease for use by the Sub-lessee and its agents, customers, employees, invitees and servants, in common with the Sub-lessor and other Sub-lessees of the Sub-lessor and users of the Airport and their respective agents, customers, employees, invitees, Sub-lessees and servants, the non-exclusive license to use such parts of the Airport set aside by the Sub-lessor for roadways and designated by the Sub-lessor from time to time for public access and ingress to and egress from the Premises, all subject to the terms of the Head Lease, this Sub-Lease and any limitations and/or rules and regulations imposed from time to time by the Sub-lessor in respect of such use.

## **SECTION 4: RENT**

### **4.1 Annual Base Rent**

The Sub-lessee shall pay to the Sub-lessor, from and after the Commencement Date, throughout the Term, ABR or Revised ABR, as the case may be, in accordance with the provisions of this Section 4 and the provisions set out in Schedule "F".

### **4.2 Payment of ABR**

ABR or Revised ABR, as the case may be, shall be paid monthly, strictly in advance, on the first day of each and every succeeding Lease Month throughout the Term.

### **4.3 Pro Rata Adjustment of ABR**

All ABR shall be deemed to accrue from day to day, and if for any reason, it shall become necessary to calculate ABR for irregular periods of less than one calendar year an appropriate pro rata adjustment shall be made in order to calculate ABR for such irregular period.

### **4.4 Concession Fee**

- (a) In addition to the ABR, the Sub-Lessee shall pay Concession Fee subject to the provisions of Section 4.6, in the amount determined in accordance with Section 1.1 (g) of the Basic Terms for each month in each year of the Term.
- (b) The payment of Concession Fee is first due and payable on the third (3rd) day following the first complete month after the end of the Pre-Commencement Period and thereafter on the third (3rd) day of each and every succeeding calendar month inclusive of the month immediately following the expiry of the Term. The amount of each payment of Concession Fee shall be equal to amount obtained by applying the formula and percentage referred to in Section 1.1 (g) of the Basic Terms to the Gross Revenue of Fuel Products and Services; to the Gross Revenue from food and beverage operations; and of Gross Revenue on all other products and services respectively for the immediately preceding month. If the Annual Statement furnished by the Sub-lessee under Section 4.05, at the end of each year of the Term after the Pre-Commencement Period, discloses that the total ABR and Concession Fee paid by the Sub-lessee for the year is less than the total ABR and Concession Fee payable by the Sub-lessee for the year under review, then the Sub-lessee shall pay any deficiency at the same time as it furnishes the Annual Statement.

### **4.5 Reporting Requirements**

- a) Before the third (3rd) day of each calendar month, after , the Sub-lessee shall deliver to Sub-lessor via electronic mail to: [monthlyreport@mbjairport.com](mailto:monthlyreport@mbjairport.com) , a statement (the “Monthly Statement”) in the form attached as Schedule I signed by the Sub-lessee which (i) states the volume of fuel sold and the Gross Revenue from the sale of fuel, non-fuel products and services and food & beverage operations at the Premises; (ii) certifies that volume of fuel sold and the Gross Revenue of fuel, non-fuel products and services and food and beverage as reported in the said monthly statement are correct and in accordance with this Sub-Lease; and (iii) is in the form and detail that Sub-lessor requires. If requested by Sub-lessor, the Sub-lessee shall cooperate with Sub-lessor in providing sales figures prior to the due date of the Monthly Statement.
- b) Before the Sixty – first (61<sup>st</sup>) day after each the end of Lease Year of the Term (except the last year of the Term when the annual statement shall be delivered within ten (10) days following the last day on which the Sub-lessee carried on business with the public from the Premises) the Sub-lessee will deliver to Sub-lessor at the place then fixed for the payment of ABR, a statement (the “Annual

Statement”) certified by a senior financial officer of the Sub-lessee, certifying that the Annual Statement is correct and showing clearly month-by-month the volume of fuel sold by the Sub-lessor and the amount of the Gross Revenue of fuel, non-fuel products and services and food & beverage operations at the Premises for the immediately preceding Lease Year. The Annual Statement shall be in form and detail approved by Sub-lessor Sales as set out in Schedule J.

- c) Before the One Hundred and Eighty-first (181st) day after each Lease Year ends the Sub-lessee shall deliver to Sub-lessor an opinion by an independent public accountant (an “Accountant”) stating that (i) the Accountant has examined, in accordance with generally accepted auditing standards, the statements as to the volume of fuel sold and the Gross Revenue (as defined in this Sub-Lease) of fuel, non-fuel products and services and food & beverage as reported by the Sub-lessee in accordance with its obligations herein for the Lease Year then ended; and (ii) that such statements are fairly presented for that Lease Year, on a basis consistent with that of the preceding Lease Year(s), as applicable.
- d) In accordance with section 4.5 (a), within six (6) days (or such other period as the Sub-lessor may hereafter approve in writing) after the end of each month during the Term, the Sub-lessee shall deliver to the Sub-lessor a written unaudited statement in the form attached as Schedule I hereof or such other form or manner as the Sub-lessor may from time to time prescribe, signed or certified by the Sub-lessee, of the Sub-lessee’s Gross Revenue of fuel, non-fuel products and services and food & beverage and the volume of fuel sold for the immediately preceding month broken down by product/service category, product/service types as or broken down as otherwise prescribed from time to time by the Sub-lessor. The Sub-lessor may require that the Sub-lessee deliver such statement both electronically, in such manner as the Sub-lessor may from time to time direct, and with a hard copy accompanying the payment of Concession Fee.
- e) If the Sub-lessee fails to maintain accurate records and data or to retain such records or to adapt proper procedures and control or to report volume of fuel sold and Gross Revenue of fuel, non-fuel products or services or food & beverage, all as required by this Sub-Lease and/or by Sub-Lessor from time to time, or if Sub-Lessor’s auditor shall report to Sub-Lessor that in its opinion, the Sub-lessee’s records, data, procedures or control are deficient for the purpose of determining volume of fuel sold and/or Gross Revenue of fuel, non-fuel products or services and food & beverage or do not comply with the requirements imposed under this Section 4.5, the Sub-Lessor may estimate volume of fuel sold and/or Gross Revenue of fuel, non-fuel products or services or food & beverage (or may order its auditors to do so) for any period affected by the failure or deficiency on the basis of such information as is accessible to Sub-Lessor and which it considers reliable (including the apparent volume of business conducted on or from the Premises) and such estimate shall be binding upon the Sub-lessee. The Sub-lessee shall pay all cost incurred by Sub-Lessor in making or obtaining such estimate and with respect to the inspection, which gave rise thereto, forthwith on demand.
- f) The Sub-lessor agrees that all commercially sensitive information reported to the Sub-lessor by the Sub-lessee pursuant to subsection 8.4(a) shall be held by the Sub-lessor in strict confidence and shall not be disclosed except with the Sub-lessee's permission or in aggregate form as a representation of commercial activity at the Airport or as may be required by law
- g) the Sub-lessee fails to report volume of fuel sold and/or Gross Revenue as required by this Sub-Lease or if in the course of an examination or audit by Sub-Lessor it appears to Sub-Lessor’s auditor that the volume of fuel sold and/or Gross Revenue of fuel, non-fuel products or services or food & beverage for any period are greater by three (3%) percent or more than those reported by the Sub-lessee for that period, the Sub-lessee shall pay all expenses of the examination or audit. Any report or opinion of Sub-Lessor’s auditor as to whether the Sub-lessee has complied with requirements of this Sub-Lease or as to the volume of fuel sold and/or amount of Gross Revenue in any period shall be final and binding upon the parties. Sub-Lessor and the Sub-lessee shall promptly make any further adjustments in payment of Concession Fee, the necessity of which is disclosed by an audit by Sub-Lessor’s auditor.

#### **4.6 Sub-lessor Discount**

The Sub-lessee shall provide the Sub-lessor with a minimum 10 % discount on the price of all Fuel Products purchased by the Sub-lessor from the Sub-lessee. No Concession Fees shall be payable to the Sub-lessor by the Sub-lessee on Gross Sales for fuel resulting from the operation of this Section 4.6.

#### **4.7 Payments Generally**

All payments by the Sub-lessee to the Sub-lessor of whatsoever nature required or contemplated by this Sub-Lease shall be:

- (a) paid to the Sub-lessor by the Sub-lessee in lawful currency of United States of America;
- (b) made when due hereunder, without prior demand therefor and without any set-off, compensation or deduction whatsoever (unless expressly provided for herein), at the office of the Sub-lessor at the Airport or such other place as the Sub-lessor may designate from time to time in writing to the Sub-lessee; and
- (c) applied towards ABR, Revised ABR or Concession Fee as the case may be, then-outstanding hereunder and/or any other amounts then-owing and payable by the Sub-lessee under this Sub-Lease in such manner as the Sub-lessor may see fit.

#### **4.8 Net Lease**

The Sub-lessee acknowledges and agrees that it is intended that this Sub-Lease is an absolutely net and carefree lease to the Sub-lessor, except as expressly herein set out; that the Sub-lessor is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or the use and occupancy thereof, or the contents thereof, or the business carried on therein, except as expressly herein set out; and the Sub-lessee shall pay all charges, impositions, taxes, costs and expenses of every nature and kind relating to the Premises, except as expressly herein set out, save and except where except any such costs, charges, expenses or outlays is a direct result of gross negligence on the part of the Sub-Lessor.

#### **4.9 Interest on Amounts in Arrears**

If the Sub-lessee fails to pay any amount payable hereunder when due and payable, the unpaid amount at the end of each month will bear interest from the due date thereof at the rate of interest that the Sub-Lessor is charged or would be charged by the Sub-Lessor Commercial Bank plus two (2%) percent, calculated and payable monthly, without prejudice to any other rights or remedies of the Sub-lessor.

#### **4.10 Arrears**

Any amounts owing and payable by the Sub-lessee to the Sub-lessor under this Sub-Lease may, at the option of the Sub-lessor, be payable and recoverable as ABR at any time, such that the Sub-lessor shall have all rights and remedies against the Sub-lessee for default in making any such payment as are available to the Sub-lessor for default in payment of ABR.

#### **4.11 Additional Rent**

The Sub-lessee shall pay to the Sub-lessor all sums referred to and payable as Additional Rent in this Sub-Lease in the amounts and at the times provided for in the demand from the Sub-lessor.

#### **4.12 Revised ABR**

Revised ABR payable during each Subsequent Period shall be determined in accordance with Schedule "F" hereto.

#### **4.13 General Consumption Tax**

In addition to the payment of all ABR and other sums payable hereunder, the Sub-lessee shall pay to the Sub-lessor (acting as agent for the taxing authority if applicable) in the manner specified by the Sub-lessor, the full amount of all General Consumption Tax (GCT) or any replacement thereof or other

similar tax imposed upon the Sub-lessee in respect of the ABR or any other amounts payable by the Sub-lessee under this Sub-Lease or in respect of the rental of the Premises by the Sub-lessee under this Sub-Lease. All taxes so payable by the Sub-lessee will:

- (1) be calculated by the Sub-lessor in accordance with the applicable legislation; and
- (2) be paid by the Sub-lessee when same are due under the applicable legislation.

Amounts payable under this sections 4.4 and 4.13 shall be not deemed to be rent, however the Sub-lessor shall have all of the same remedies for and rights of recovery with respect to such amounts as are available to the Sub-lessor for recovery of rent under this Sub-Lease.

#### **4.14 Sub-lessee's Records**

The Sub-lessee covenants and agrees to keep and maintain for a period of no less than seven (7) years following the end of each lease year, full, true and accurate books and records which record all amounts paid by the Sub-lessee to the Sub-lessor pursuant to this Sub-Lease and which satisfy the requirements of generally accepted accounting principles and which would normally be examined by an independent chartered accountant in performing a detailed audit of the Sub-lessee's business involving the Sub-lessor. The Sub-lessee further agrees that upon written request, the Sub-lessee, solely for the purposes of ascertaining Additional Concession Fee (as defined in the Concession Agreement) payable by the Sub-lessor to the AAJ, shall open its books and records for inspection or audit, or either, at any time and from time to time by the AAJ and/or by the AAJ's auditors or chartered accountants at the Sub-lessee's offices.

#### **4.15 Prepayment of ABR**

The Sub-lessor and the Sub-lessee covenant and agree that the prepayment (or payment in advance) of any ABR payable under this Sub-Lease for more than one (1) year (and the prepayment or payment in advance of any other amounts payable to the Sub-lessor under this Sub-Lease for more than one (1) year is permitted once the prior written approval of the Sub-lessor has been obtained.

### **SECTION 5: TAXES**

#### **5.1 Sub-lessee's Taxes**

The Sub-lessee shall pay promptly, when due, all taxes, assessments, charges and rates, as well as any permit or licence fees, attributable to the Premises, including the Improvements, and on the property, business, sales, or income of the Sub-lessee in respect of the business carried on by the Sub-lessee from the Premises.

#### **5.2 Property Taxes**

- (a) Throughout the Term, but subject to subsection 5.2(f) below, the Sub-lessee shall reimburse to the Sub-lessor all Property Taxes paid by the Sub-lessor to the AAJ on the Premises on a prorated basis assessed by reference to the area of the Premises
- (b) The Sub-lessee shall furnish to the Sub-lessor, upon request, official receipts or other proof satisfactory to the Sub-lessor evidencing payment of Property Taxes due by the Sub-lessee under this SECTION 5 where any such payments have been paid to a taxing authority by the Sub-lessee.
- (c) The Sub-lessee has the right to appeal or contest the validity of Property Taxes. Prior to appealing or contesting all or any portion of any Property Taxes, the Sub-lessee shall provide the Sub-lessor with ten (10) days prior written notice of its intention to do so. The Sub-lessee shall also deliver to the Sub-lessor prior to appealing or contesting all or any portion of any Property Taxes, such security as the Sub-lessor, acting reasonably, may reasonably require. The Sub-lessee shall prosecute any such proceedings with due diligence and shall keep the Sub-lessor advised, in writing, with respect to the progress thereof.
- (d) If the Sub-lessee is contesting in good faith the amount or validity of any Property Taxes and has complied with the provisions of this SECTION 5 and if it becomes necessary for the Sub-lessor to join in or consent to the proceedings, the Sub-lessor shall join or consent as

required, and the Sub-lessee shall indemnify the Sub-lessor against all expenses reasonably incurred and arising therefrom.

- (e) If a separate assessment of Property Taxes for the Premises is, for any reason, not made or levied by the appropriate taxing authority, or where Property Taxes are separately assessed for the Premises, should the Sub-lessor, upon written notice to the Sub-lessee, choose to collect all or any portion of the Property Taxes, the Sub-lessee shall pay to the Sub-lessor, on demand, as Additional Rent, an amount determined and allocated by the Sub-lessor, acting reasonably and equitably (using such general principles of assessment and such assessment values and other information relating to the Airport and/or to the Premises as is available) to be equal to the amount of Property Taxes or grants in lieu of Property Taxes payable in respect of the Premises, together with an amount established by the Sub-lessor, acting reasonably, in accordance with the Sub-lessor's then-current policy, as an administrative and overhead charge.
- (f) In the event that amounts become payable to the Sub-lessor on account of Property Taxes pursuant to subsection 5.2(e) above, such amounts shall be payable within ten (10) days of the date such Property Taxes shall become due to the taxing authority or, at the option of the Sub-lessor, in equal monthly instalments (based upon the Sub-lessor's reasonable estimates determined in accordance with Section 5.2(e)), in advance, on the dates and at the times set out under this Sub-Lease for payment of ABR or Revised ABR, as the case may be. The Sub-lessor shall be entitled, upon fifteen (15) days' written notice, to subsequently revise any estimate(s) upon which payments required hereunder are based and monthly instalments shall be adjusted accordingly. Within ninety (90) days following the end of the calendar year or such other accounting period as the Sub-lessor may adopt from time to time (the "Accounting Period"), the Sub-lessor shall compute the Property Taxes which should have been paid in respect of the Premises for such Accounting Period and shall submit a statement thereof to the Sub-lessee. If the total amount paid by the Sub-lessee on account of the Property Taxes pursuant to subsection 5.2(e) above is less than the amount which should have been paid during such Accounting Period, then the Sub-lessee shall pay the difference to the Sub-lessor forthwith. If the total amount paid by the Sub-lessee exceeds the amount which should have been paid during such Accounting Period, then the difference shall be repaid to the Sub-lessee forthwith or, if any amounts due hereunder are outstanding, applied by the Sub-lessor, at its sole discretion against outstanding amounts. Should the Term expire during the course of an Accounting Period, the Sub-lessee shall thereafter be provided with a statement with respect to the matters set out herein prepared as of such date and adjustments will be made accordingly.
- (g) In the event that amounts become payable to the Sub-lessor on account of Property Taxes pursuant to subsection 5.2(f) above, then upon written request of the Sub-lessee, the Sub-lessor shall provide the Sub-lessee with a copy of the relevant tax bill(s) pertaining to the Premises (or excerpts thereof), together with sufficient information to permit the Sub-lessee, acting reasonably, to verify the appropriateness of the Sub-lessor's allocation of Property Taxes pursuant to subsection 5.2(f) above. Alternatively, the Sub-lessor, at its option, may ask its auditors to review its books and records with respect to Property Taxes and the Sub-lessor's auditors, forthwith following its inspection and review of the Sub-lessor's books and records, shall provide to the Sub-lessee a certificate setting out, in reasonable detail, sufficient information to permit the Sub-lessee, acting reasonably, to verify the appropriateness of the Sub-lessor's allocation of Property Taxes pursuant to subsection 5.2(g) above.
- (h) The Sub-lessor covenants and agrees that to the extent the Sub-lessor receives any payments on account of Property Taxes pursuant to subsection 5.2(f) above, the Sub-lessor shall remit same to the appropriate taxing authority.

### **5.3 Municipal Charges**

The Sub-lessee shall pay, to the appropriate authorities, before any fine, penalty, interest or costs accrue for the non-payment thereof, all applicable development cost charges, building or development permit fees, inspection fees, licence fees and other municipal charges applicable to the Premises. In the event, however, that any such fees or charges are paid by the Sub-lessor, whether on its own behalf or on behalf of the Sub-lessee, the Sub-lessee agrees to reimburse the Sub-lessor with respect to same within thirty (30) days of demand therefor.

## **SECTION 6: SECURITY**

### **6.1 Provide Security**

As security for the payment of ABR and Concession Fee hereunder and the performance of all of the obligations of the Sub-lessee, the Sub-lessee shall provide the security specified in Sections 6.2 or 6.3.

### **6.2 Form, Content and Amount**

The Sub-lessee shall, upon execution of this Sub-Lease by the Sub-lessee, deliver to the Sub-lessor an irrevocable letter of credit or Bank Guarantee issued in favour of the Sub-lessor by a bank acceptable to the Sub-lessor, in form and content determined by the Sub-lessor. The amount shall be equal to three (3) months' ABR and Concession Fee. At the commencement of this Sub-Lease, three (3) months Concession Fee shall be based on the projected Concession Fee for the first Lease Year. At the commencement of each Lease Year following, the Sub-lessee shall deliver to the Sub-lessor an irrevocable letter of credit or Bank Guarantee issued in favour of the Sub-lessor by a bank acceptable to the Sub-lessor, in form and content determined by the Sub-lessor sufficient to ensure that the level of the Security held by the Sub-lessee is equivalent to (3) three monthly instalments of Revised Base ABR for that Lease Year and three (3) months Concession Fee based on the previous three (3) months of the Term prior to the start of the new Lease Year.

### **6.3 Alternate Security**

Either the Sub-lessee or Sub-lessor may elect for a cash security deposit as alternative security to a letter of credit or Bank Guarantee, in which event the same shall be updated at the commencement of each Lease Year to ensure that the level of the Security held by the Sub-lessee is equivalent to (3) three monthly instalments of Revised Base Annual Rent for that Lease Year. No interest will accrue on cash security deposit.

### **6.4 Drawings**

In the event the Sub-lessee is in arrears of payment to the Sub-lessor of any rent or any other sum payable by the Sub-lessee under this Sub-Lease beyond any cure period provided hereunder, the Sub-lessor may, in addition to any other right or remedy, draw on the letter of credit or Bank Guarantee to pay the arrears or deduct the arrears from the security deposit, as the case may be.

### **6.5 Renewal or Replacement**

- (a) The Sub-lessee shall provide the Sub-lessor with a renewal or replacement letter of credit or Bank Guarantee as the case may be at least thirty (30) days before the date on which any letter of credit expires and shall immediately after any drawing by the Sub-lessor on a letter of credit, deposit an additional letter of credit with the Sub-lessor in the amount paid by the issuer of the letter of credit to the Sub-lessor, failing which, in either case, the Sub-lessor may draw the full amount of the letter of credit and hold the funds as a security deposit pursuant to this SECTION 6.
- (b) The Sub-lessee shall, immediately after the Sub-lessor deducts arrears from any cash security deposit, deposit an additional cash security deposit in the amount of such arrears with the Sub-lessor.

### **6.6 Increase or Decrease Amount**

The Sub-lessor shall have the right, on no less than thirty (30) days prior written notice to the Sub-lessee, to increase or decrease the amount of the security that the Sub-lessee is required to maintain under this SECTION 6 so that such amount continues to represent the amount the Sub-lessor estimates will be payable for Annual Base Rent or Revised Annual Base Rent, as the case may be, and Additional Rent for the Premises over a period of three (3) months.

### **6.7 Return of Security**

Within sixty (60) days following the expiration or sooner termination of the Term, provided that the Sub-lessee has paid all amounts payable under this Sub-Lease, including all costs and expenses incurred by the Sub-lessor in correcting or satisfying any default or fulfilling any obligation of the Sub-

lessee under this Sub-Lease and has otherwise fulfilled its obligations under this Sub-Lease, the Sub-lessor shall release to the Sub-lessee any letter of credit or cash security deposit which the Sub-lessor then holds, without interest.

## **SECTION 7: REPRESENTATIONS OF SUB-LESSEE**

### **7.1 Corporate Status**

The Sub-lessee represents to the Sub-lessor that the Sub-lessee has been duly incorporated as a corporation with share capital, that it is authorized to carry on business in Jamaica and that it is in compliance with all laws that may affect it and has the legal capacity and corporate power to enter into this Sub-Lease and to perform and meet any and all duties, liabilities and obligations as may be required of it under this Sub-Lease.

### **7.2 Outstanding Litigation**

The Sub-lessee represents to the Sub-lessor that to the best of its knowledge and belief, there are no actions, suits or proceedings pending or to the knowledge of the Sub-lessee threatened against or adversely affecting the Sub-lessee in any court or before or by governmental department, commission, board, bureau or agency, Jamaican or foreign, which might materially affect the financial condition of the Sub-lessee or the Sub-lessee's ability to satisfy its obligations under this Sub-Lease in any material respect.

### **7.3 Material Change**

The Sub-lessee agrees to notify the Sub-lessor in writing immediately of any material change in the conditions set out in subsections 7.1 and 7.2.

## **SECTION 8: USE AND OCCUPATION**

### **8.1 Use**

- (a) The Premises shall be used as a site for constructing and carrying out the Improvements, including the System, in accordance with the provisions of this Sub-Lease generally, including, without limitation, the provisions of Schedule "D" and Schedule "G" attached hereto. Thereafter, subject to the provisions hereof and of Sections 8.2 and 8.3 below, the Premises, including the Improvements, shall be used only for the purposes of, subject to the terms and conditions of the Lease, including, without limitation, the provisions of Schedule "G":
  - (i) the operation of a Sub-lessee-branded public motor vehicle fuel service station offering regular unleaded gasoline, premium unleaded gasoline, regular diesel and ultra low sulfur diesel (ULSD) fuel and convenience store concession in keeping with the Airport's Customer Service and Pricing Policy at Schedule "L";
  - (ii) on a non-exclusive basis at the Airport, receiving, storing, dispensing and handling Fuel Products, that is, regular unleaded gasoline, premium unleaded gasoline, regular diesel and ultra low sulfur diesel (ULSD) fuel, used for the fuelling of motor vehicles, airline equipment and the fuelling equipment in support of the System but does not include Aviation Fuel, subject to Section 8.1(d) below. Save and except for any pre-existing arrangements, as the case may be, no other entity shall be permitted by the Sub-lessor, to operate a petroleum filling station at the Airport during the Term. The Sub-lessee acknowledges and accepts that any operations carried out by the Sub-lessee in connection with the concession herein granted on the airside area of the Airport though not part of the Premises shall be subject to the regulations outlined in Section X of Schedule G;
  - (iii) Any other use the parties hereto shall hereafter agree in writing.

and for no other purpose or purposes whatsoever. In addition, the Sub-lessee agrees:

- (b) The Sub-lessee agrees to continuously, actively and diligently operate (subject to Force Majeure) the Premises and to continuously, actively and diligently, manage, and maintain the



Premises, including the Improvements, in an up-to-date, first class and reputable manner (consistent with its obligations pursuant to subsection 12.1(a) below) and:

- (i) install in, on, within or upon the System, keep in good order and condition, fixtures and equipment of first class quality;
  - (ii) keep the Improvements at all times in a safe, neat, clean, orderly and first class condition;
  - (iii) ensure that there shall be no open storage of any goods on the Premises and all garbage shall be contained within an enclosed structure which garbage storage structure shall be maintained in a good state of repair at all times in order to provide for proper foreign object damage control;
  - (iv) all driveways, parking areas, aprons and paved areas, as applicable, which may be situate on the Premises, shall be maintained in a good state of repair at all times and shall be properly marked; and
  - (v) ensure that fencing, shall be constructed and maintained at all times so as to ensure proper and effective security;
- (c) The Sub-lessee agrees to discontinue, at the request of the Sub-lessor, acting reasonably, any conduct, business, practice, or operation in relation to the Premises that in the opinion of the Sub-lessor, may harm the reputation of the Sub-lessor or the Airport or reflect unfavourably on the development of the Premises or on the Airport as a whole; it being acknowledged that the permitted use detailed in Section 8.1 above is not a use which would otherwise harm the reputation of the Sub-lessor or the Airport or reflect unfavourably on the development of the Premises or on the Airport as a whole if conducted in accordance with the provisions of this Sub-Lease; and
- (d) The Sub-lessee agrees not to do or suffer any act in, over, upon or under the Premises or the Airport that may injure, impair or cause damage to the Airport or its operations.
- (e) The Sub-lessee's rights in connection with the uses contemplated under Subsections 8.1(i), 8.1(ii) and 8.1(iii) above shall at all times be subject to the following conditions and limitation:
  - (i) the Sub-lessee agrees that nothing herein shall limit or prevent the Sub-lessor or any of its agents or any other occupant or person at the Airport from contracting with any other parties ("**Service Provider(s)**") in connection with the delivery or sale of Fuel Products at the Airport, and subject to Section 6.1 of Schedule "G", to any and all other parts of the Airport;

## 8.2 Prohibited Uses

Without limiting the generality of Section 8.1 above, the Sub-lessee agrees not to use or permit the Premises to be used for any of the following businesses or activities:

- (1) any unlawful or illegal purpose, activity or use, or any dangerous or harmful activity having regard to the health and safety of persons; it being acknowledged that the use detailed in Section 8.1 above is not a use which is categorized as falling within the above activities if conducted in accordance with the provisions of this Sub-Lease;
- (2) any activity which is unrelated to the ordinary and usual operations of the Sub-lessee; and
- (3) any act outside of the ordinary and usual activity at a major international airport that constitutes a nuisance to any occupant of lands or premises adjoining or in the vicinity of the Premises or to the public generally or to the Sub-lessor or to the AAJ or any other occupant of any part of the Airport; it being acknowledged that the permitted use detailed in Section 8.1 above is not a activity outside of the ordinary and usual activity at a major international airport that would constitute a nuisance if conducted in accordance with the provisions of this Sub-Lease.

### 8.3 Additional Provisions

In addition to the prohibitions set out in Section 8.2 above and without limiting the generality of Section 8.1, the Sub-lessee further agrees:

- (a) not to allow the Premises, including the Improvements, or any part thereof, to be used for or occupied for:
  - (i) the purpose of constructing or operating any Air Terminal Building and/or other building used for public passenger service facilities;
  - (ii) any purpose which is not consistent with the use of the Airport as an international airport; it being acknowledged that the permitted use detailed in Section 8.1 above is not a purpose which is inconsistent with the use of the Airport as an international airport if conducted in accordance with the provisions of this Sub-Lease; and
- (b) not to conduct advertising or promotions of any kind on or about the Airport without the prior written consent of the Sub-lessor's Commercial Business Development & Marketing Manager, which consent shall not be unreasonably withheld. The Sub-lessee hereby acknowledges that the Sub-lessor has entered into agreements with third parties regarding: (i) advertising rights within the Air Terminal Building and within any new air terminal building(s) which may be constructed at the Airport; and (ii) regarding outdoor advertising at certain specific locations. The Sub-lessee agrees that save and except for advertising and displays erected, installed or placed within the System and/or elsewhere upon the Premises (and with respect to which, the provisions of Section 19.2 below apply), it would be reasonable for the Sub-lessor to withhold its consent to a request made pursuant to this paragraph (c) if to grant such consent would breach the Sub-lessor's obligations to any such third parties.

### 8.4 Additional Rights of the Sub-lessor

- (a) The Sub-lessor, on its own behalf and on behalf of the AAJ, reserves the right to grant easements, licenses, rights of way or privileges to others on, over, under, through or across the Premises, or any part thereof, and, if necessary, the Sub-lessee covenants to grant any such easements, licenses, rights of way or privileges upon written request to do so, for the purposes of causing any services or utilities to be brought on, over, under, through or across any part of the lands comprising the Airport, to provide services to any Air Navigation Facility or any other facility operated by or on behalf of the Sub-lessor, or the AAJ or the Jamaica Civil Aviation Authority, provided however, that such easements, licenses, rights of way or privileges are not, in any material way, detrimental to the Sub-lessee's use hereunder, will not permanently damage or disrupt the Premises or Improvements, will not impose any cost upon the Sub-lessee, and will not weaken, diminish or impair the right and obligations of the parties under this Sub-Lease. Notwithstanding the foregoing, in no event shall any such license, right of way or privilege be granted in favour of any party for a use which is reserved for the Sub-lessee under this Sub-Lease, and in no event shall the granting of such easements, licenses, rights of way or privileges in any way alter jeopardise, or otherwise impair the structural integrity or safety of any fuel storage facility and equipment on or in the Premises, once constructed.
- (b) The Sub-lessor further reserves the right to make any improvements and developments to the Airport and to undertake construction as necessary for the operation of the Airport; provided, however, if such improvement, development or construction in the vicinity of the System will:
  - (i) adversely affect the operation of the System in a material manner;
  - (ii) damage or disrupt the System in a material manner;
  - (iii) impose any direct cost upon the Sub-lessee; or
  - (iv) materially affect the Sub-lessee's rights and obligations hereunder;

the Sub-lessor shall adequately compensate the Sub-lessee with respect to any of the foregoing resulting therefrom on the basis of substantiated claims; provided however, that the Sub-lessor shall have no obligation to compensate the Sub-lessee as provided above where any such improvements, developments or construction would result in new,

expanded or improved fueling opportunities for the Sub-lessee whether or not the Sub-lessee takes advantage of such opportunities and, in such cases, the Sub-lessor agrees to extend the Term of this Sub-Lease to enable the Sub-lessee to reasonably amortize its cost of construction from the forgoing. Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of the Sub-lessor, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Sub-lessor be liable to compensate the Sub-lessee for any indirect or consequential damages suffered by the Sub-lessee with respect to any of the forgoing.

Prior to undertaking any improvement, development or construction, the Sub-lessor shall give sixty (60) days' notice in writing prior to any construction or excavation at the Airport, except in case of emergency, within ten (10) metres of the Premises.

## **SECTION 9: ENVIRONMENTAL MATTERS**

### **9.1 Suitability**

- (a) Except as otherwise expressly set out below, the Sub-lessor makes no representations or warranties in respect of the suitability of the Premises for the Sub-lessee's use or proposed use, the state or condition of the Premises or any Environmental Matters in respect of the Premises. The Sub-lessee acknowledges that the Premises are being delivered to the Sub-lessee in an "as is" condition.
- (b) The parties acknowledge that the following environmental study in the Airport Master Plan shall be used to assist in the determination of the condition of the soil, surface water and the ground water of the Airport and the Premises.
- (c) The Sub-lessor and the Sub-lessee agree that the purpose of the Studies and any assessments and/or other reports referred to in section 9.1(d) below is to assist the parties to identify Environmental Matters creating Environmental Adverse Effects, if any, affecting the Premises prior to the Commencement Date.
- (d) The Sub-lessee agrees that should it commission or otherwise cause any environmental assessments, investigations and/or other reports to be conducted in relation to the Premises at any time during the Term, it shall provide copies of such assessments and/or reports to the Sub-lessor within ten (10) business days of receipt thereof by the Sub-lessee.

### **9.2 Sub-lessee's Obligations**

- (a) The Sub-lessee shall conduct its business and affairs on the Premises and at the Airport in a prudent and responsible manner and with all due care and due diligence with respect to Environmental Matters.
- (b) The Sub-lessee shall immediately notify the Sub-lessor's Operations Department of the Sub-Lessor of any Environmental Adverse Effect and proceed to clean-up all parts of the Airport, including the Premises, where, as a result of any acts or omissions of the Sub-lessee and invitees, agents, contractors, permitted Sub-lessees and others for whom the Sub-lessee is, in law, responsible, there has occurred, at any time during the Term, an Environmental Adverse Effect, including, without limiting the generality of the foregoing, where there has been a release by the Sub-lessee (or its employees, agents, invitees, Sub-lessees, contractors, or others for whom it is in law responsible) of a hazardous substance caused by the seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of toxic, hazardous or special wastes or other chemical substances or dangerous goods, pollutants or other Environmental Contaminants into the Natural Environment, with all due care and due diligence. In connection therewith and to the extent the Sub-lessee is responsible to clean-up all or any part of the Airport, including the Premises, the Sub-lessee shall, at its own cost and expense, prepare all necessary studies, plans and proposals and submit same to the Sub-lessor for the Sub-lessor's prior approval, provide all bonds and other security required by all authorities having jurisdiction and carry out all required remedial work, and shall keep the Sub-lessor fully informed and provide to the Sub-lessor full information with respect to proposed plans and comply with the Sub-lessor's reasonable requirements with respect to such plans. The Sub-lessee further agrees that if the

Sub-lessor determines, in its own discretion acting reasonably, that the Sub-lessor, or the Airport, or any portion(s) thereof, is placed in jeopardy by the need for any such work, the Sub-lessor may itself undertake such work or any part thereof at the cost and expense of the Sub-lessee. Notwithstanding any provision in this Sub-Lease to the contrary, in no event shall the Sub-lessee have any obligation under this Section 9.2(b) for any Environmental Adverse Effect not caused by the Sub-lessee or its employees, agents, invitees, contractors, permitted licensees or others for whom it is in law responsible, whether existing on or at the Premises, the Airport or any lands adjacent thereto.

- (c) The Sub-lessee shall ensure that the design of any improvement on the Premises, including the Improvements, addresses and deals with any Environmental Matters which can be reasonably foreseen.
- (d) The Sub-lessee in constructing the Improvements and conducting its business shall comply with all Environmental Laws and Regulations.
- (e) The Sub-lessee shall immediately notify the Sub-lessor and provide to the Sub-lessor such information as is available to the Sub-lessee concerning any failure of the Sub-lessee to comply with any of the requirement of any Environmental Laws and Regulations, or whether the Sub-lessee is the subject of any pending or, to the knowledge of the Sub-lessee after due enquiry, threatened environmental proceeding.
- (f) To the extent the Sub-lessor is authorized or permitted to do so, upon written request received from the Sub-lessee, the Sub-lessor agrees to provide to the Sub-lessee copies of all reports in its possession pertaining to the soil, surface water and ground water condition of the Premises. The Sub-lessor does not in any way warrant the scope or accuracy of any information regarding Environmental Matters which it may disclose to the Sub-lessee and no such information, nor the reliance thereon by the Sub-lessee, shall in any way relieve the Sub-lessee from its obligations to satisfy itself as to the Premises, nor its obligations to maintain the Premises under this Sub-Lease.
- (g) In the event any claim, demand, action or notice is made against the Sub-lessee regarding its failure or alleged failure to comply with Environmental Laws and Regulations, the Sub-lessee shall provide the Sub-lessor with copies of all written claims, demands, notices or actions so made.
- (h) The Sub-lessee shall, prior to the storage of any fuel on the Premises , provide to the Sub-lessor for the Sub-lessor's approval, a written proposal of the Sub-lessee's policy and procedures with respect to Environmental Matters, which shall include a separate environmental emergency response plan, procedures for operation and maintenance of leak detection, overflow protection, oil and water separators and secondary containment, and shall make such amendments as, in the Sub-lessor's reasonable opinion, are from time to time required, and the Sub-lessee shall carry out its operations in accordance with the approved policy and procedures. The Sub-lessee's policy and procedures shall address, but are not limited to, fuel storage and handling, storage, transport, use and disposal of hazardous materials and special waste, water quality practice and waste management. The Sub-lessee shall require any person it grants a right or privilege to under this Sub-Lease to comply with the Sub-lessee's policy and procedures. In the event that from time to time, the Sub-lessee amends its policies and procedures, the Sub-lessee agrees, forthwith thereafter, to provide copies of such amended policies and procedures to the Sub-lessor.
- (i) In the event that at any time during the Term there is an Environmental Adverse Effect arising out of the Sub-lessee's operations and, in the reasonable opinion of the Sub-lessor's arm's length, third party expert, it is necessary in order to minimize any damages, expenses, penalties and related fees or costs, arising from such Environmental Adverse Effect, the Sub-lessor, in addition to any other rights and remedies under this Sub-Lease, upon such prior notice to the Sub-lessee as the Sub-lessor considers reasonable, may enter upon the Premises, including any Improvements, and take measures to minimize such damages, expenses, penalties and related fees and costs, and to ensure compliance with Environmental Laws and Regulations, all at the Sub-lessee's expense.

- (j) Without limiting the generality of any other provisions of this SECTION 9, the Sub-lessee shall not discharge from the Premises or permit to be discharged from the Premises or allow to pass from the Premises into the sewer systems, storm drains or surface drainage facilities on the Airport, any Environmental Contaminants or any other material or substance as may cause an Environmental Adverse Effect or which may be contrary to any sewer discharge bylaw of the Saint James Parish Council or other proper authority.
- (k) The Sub-lessee shall forthwith notify the Sub-lessor of any communication it has received and provide copies of all correspondence and documents which it has received or of which it is aware:
  - (i) regarding the violation or alleged violation of Environmental Laws and Regulations relating to the Premises and any improvements thereon or the Sub-lessee's operations on the Premises, or on the Airport;
  - (ii) any change in the Sub-lessee's operations on the Premises or the Airport that will change or could reasonably be expected to change the Sub-lessee's or the Sub-lessor's obligations or liabilities under Environmental Laws and Regulations; and
  - (iii) of any Sub-lessee's application, notice or report to any authority having jurisdiction regarding Environment Laws and Regulations or the Natural Environment.
- (l) The Sub-lessee shall establish a program of monitoring the Premises for the purpose of providing regular information to the Sub-lessor about Environmental Matters, and shall conduct such testing and analysis as is contemplated by such program. All such tests shall be conducted at the cost and expense of the Sub-lessee by qualified experts chosen by the Sub-lessee and subject to the Sub-lessor's reasonable approval. Copies of all reports from any testing relating to Environmental Matters shall be provided to the Sub-lessor.
- (m) With respect to storage tank systems located upon the Premises, the Sub-lessee shall comply with all Environmental Laws and Regulations and shall, upon such prior notice to the Sub-lessee as the Sub-lessor considers reasonable, permit the Sub-lessor to examine all records relating to the operation and maintenance of storage tank systems.

### **9.3 Inspection**

The Sub-lessor shall, upon twenty-four (24) hours' prior written notice to the Sub-lessee, be entitled to inspect the Premises in the company of a Sub-lessee Representative, including the Improvements, to determine compliance with all Environmental Laws and Regulations. In this regard, the Sub-lessor is entitled to gain access to the Premises, including the Improvements, on the understanding that the Sub-lessor shall cause as minimal interference as possible upon the Sub-lessee's operations when exercising this right of access. The Sub-lessor acknowledges that on these occasions where this access is undertaken, the Sub-lessee shall not be required to temporarily or otherwise, discontinue its operations unless the Sub-lessor, acting reasonably, determines it is necessary to complete its inspection. The Sub-lessor agrees to indemnify the Sub-lessee for any direct out-of-pocket loss or damage incurred by the Sub-lessee by reason of any wrongful act or negligence on the Premises on the part of the Sub-lessor during such access occasions.

### **9.4 Environmental Site Assessment; Remedial Work**

- (a) The Sub-lessee, at its sole expense, shall cause to be conducted once every three (3) years during the Term an Environmental Site Assessment to American Society for Testing and Materials (ASTM) standard and the report submitted to MBJ. A tank and piping Non Destructive Testing (NDT) and tightness testing shall also be included in this assessment.
- (b) The Sub-lessee, at its sole expense not later than six (6) months (but not more than twelve (12) months) prior to the end of the Term shall cause an environmental assessment to be conducted to determine the environmental condition of the Premises.
- (c) All assessments conducted by virtue of this provision shall be conducted by qualified experts chosen by the Sub-lessee, which experts (and the scope of such assessment) must receive the prior approval of the Sub-lessor, which approval shall not be unreasonably withheld or delayed. In the event that any such assessment demonstrates or suggests that further investigation is warranted due to a suspected Environmental Adverse Effect, the Sub-lessee agrees, at its sole cost, to cause an extensive assessment to be conducted by qualified experts chosen by the Sub-lessee which experts

(and the scope of such assessment) must receive the prior approval of the Sub-lessor, which approval shall not be unreasonably withheld or delayed. Copies of all assessment results and reports shall be provided to the Sub-lessor. The Sub-lessee agrees that the soil and ground water of the Premises upon termination of this Sub-Lease must be in no worse condition, than at the commencement of the Term, as a result of the Sub-lessee's use (or the use of its employees, invitees, contractors, agents, Sub-lessees, sublessees or others for whom it is responsible for at law) of the Premises. In addition, prior to the end of the Term (or as soon thereafter as is possible in the circumstances), the Sub-lessee undertakes: (i) to complete all remedial work required to ensure that there are no Environmental Matters creating Environmental Adverse Effects affecting the Airport, including the Premises, during the Term, resulting from the acts or omissions of the Sub-lessee or any invitee, contractor, agent, Sub-lessee, sublessee of the Sub-lessee or others for whom the Sub-lessee is in law responsible, whether such Environmental Adverse Effects are disclosed by any such assessment or otherwise; and (ii) to forthwith post a bond in the name of the Sub-lessor and in the amount equal to the cost of any required remediation as security for the Sub-lessee's obligations hereunder.

#### **9.5 Indemnity**

The Sub-lessee shall indemnify and hold harmless the Sub-lessor and the AAJ against any and all costs including fines, penalties or administrative costs that may be associated with any Environmental Matters creating an Environmental Adverse Effect or breaches of Environmental Laws and Regulations arising out of the use or operations of the Airport, including the Premises, by the Sub-lessee or any invitee, contractor, agent, Sub-lessee, licensee of the Sub-lessee or others for whom the Sub-lessee is in law responsible, and any improvements thereon, including the Improvements (including all of the Sub-lessor's costs of labour, materials and equipment based on cost recovery plus a reasonable premium as an administrative and overhead charge) and all related costs, damages, fines or penalties of any kind incurred by or assessed or charged to the Sub-lessor arising out of any operations carried out on the Premises by the Sub-lessee or by persons for whom the Sub-lessee is, at law, responsible, in order to comply with Environmental Laws or Regulations or to remediate Environmental Adverse Effects to the extent that the Sub-lessee is obliged to do so hereunder. The provisions of Section 9.2 and of this Section 9.5 and the indemnity contained herein shall survive the expiration of this Sub-Lease to the extent that the Environmental Adverse Effect or breach of Environmental Laws and Regulations occurred during the Term.

#### **9.6 Enquiries by Sub-lessor**

The Sub-lessee hereby authorises the Sub-lessor to make enquiries from time to time of any government or governmental agency with respect to the Sub-lessee's compliance with Environmental Laws and Regulations pertaining to the Sub-lessee, the Premises and any business conducted on or from the Premises, including any law pertaining to Environmental Matters and the protection of the environment; and the Sub-lessee covenants and agrees that the Sub-lessee will from time to time forthwith on demand provide to the Sub-lessor such written authorization as may reasonably be required in order to facilitate the obtaining of such information.

#### **9.7 Environmental Management Program**

The Sub-lessor hereby advises the Sub-lessee that under the Head Lease, the Sub-lessor is obligated to prepare and develop an ongoing Environmental Management Program. The Sub-lessee agrees that it shall conduct its business and affairs on the Premises and at the Airport in a manner which shall be consistent with the Sub-lessor's Environmental Management Program located at Appendix IV, as may be updated from time to time and notified in advance to the Sub-lessee, provided that the Sub-lessor's Environmental Management Program are not inconsistent with the Sub-lessee's rights under this Sub-Lease.

#### **9.8 Other Environmental Obligations**

The Sub-lessee hereby agrees that all development, construction or redevelopment activity at the Airport undertaken by the Sub-lessee shall:

- (a) comply with all Environmental Laws and Regulations and all regional and local municipal environmental standards, procedures, by-laws, regulations, directives, and requirements established from time to time by the AAJ as a municipal government;

- (b) not be undertaken until all necessary environmental assessments, studies, and impact statements have been prepared and all necessary applicable governmental approvals have been obtained; and
- (c) comply with all environmental requirements set forth in any Airport master plan.

## **9.9 Ownership of Environmental Contaminants**

If the Sub-lessee brings, permits, suffers or creates in or on the Airport, any Environmental Contaminants or if the conduct of any business or undertaking on the Premises or any part of the Airport or the use of any part of the Airport by the Sub-lessee (its employees, agents, invitees, contractors, Sub-lessees or others for whom the Sub-lessee is responsible for at law) causes there to be Environmental Contaminants upon the whole or any part of the Airport which causes or contributes to any Environmental Adverse Effect then, notwithstanding any provision of this Sub-Lease or rule of law to the contrary, such Environmental Contaminants shall be and remain the sole and exclusive property of the Sub-lessee and shall not become the property of the Sub-lessor notwithstanding the degree of affixation of such Environmental Contaminants or the goods containing such Environmental Contaminants to the Airport and notwithstanding the expiry, surrender or early termination of this Sub-Lease.

## **SECTION 10: ALTERATIONS, FIXTURES**

### **10.1 Sub-lessee's Alterations**

- (a) The Sub-lessee shall not make or cause to be made any alterations, additions or improvements, including the Improvements, or erect or cause to be erected the System or any other buildings on the Premises without first obtaining (i) the Sub-lessor's written consent, which consent shall not be unreasonably withheld or delayed;
- (b) When seeking an approval from the Sub-lessor as required by this Section 10.1, the Sub-lessee shall present to the Sub-lessor plans and specifications of the proposed work may not commence work until the Sub-lessee has received a written approval from the Sub-lessor.
- (c) The Sub-lessee shall promptly pay all contractors, material suppliers and workmen so as to minimize the possibility of any disruption to the Premises or the Airport.
- (d) The Sub-lessee shall post and keep posted all notices in connection with any work to be performed by or on behalf of the Sub-lessee on the Premises in order to prevent any lien or claim of lien being noted or filed or otherwise constituting an encumbrance on any interest of the Sub-lessor or the AAJ, all in such form and locations as may be approved by the Sub-lessor.
- (e) All work to be performed by or on behalf of the Sub-lessee on the Premises shall be performed in accordance with the requirements, terms and conditions specified in the appropriate approval issued by the Sub-lessor and in any consent given by the Sub-lessor, by competent contractors and subcontractors.
- (f) The Sub-lessee agrees that all working drawings and specifications supplied to contractors shall be consistent with the approval granted.
- (g) Before commencing excavation or any work on the Premises for the construction of any improvements, including the Improvements, the Sub-lessee shall have:
  - (i) submitted to the Sub-lessor the plans that relate to the portion of the work which the Sub-lessee proposes to commence;
  - (ii) furnished proof of insurance acceptable to the Sub-lessor; and
  - (iii) obtained from the contractor the indemnity, insurance and performance bonds required by the contract.
- (h) The Sub-lessee shall perform and comply with the following covenants and requirements in the construction of any improvements, including the Improvements:

- (i) all necessary permits and licences shall be obtained and all legal requirements pertaining to the conduct of the work shall be complied with;
  - (ii) the construction work shall be conducted expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this Sub-Lease;
  - (iii) the Sub-lessee shall properly supervise the work;
  - (iv) any contractor engaged on the work shall be required to observe all provisions of its contract with the Sub-lessee, and to furnish and maintain all security, indemnity, insurance and performance bonds required by the contract; and
  - (v) the Sub-lessor may require the Sub-lessee at its own expense to submit at reasonable intervals certificates of the Sub-lessee's architects or contractor of the standing of the work, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained by the Sub-lessee on any contract, and the Sub-lessee shall also, whenever requested by the Sub-lessor, furnish copies or certificates furnished to it by contractors or by the Sub-lessee's architects or contractor/s in connection with construction.
- (i) Without limiting the generality of the provisions of this Section 10, the Sub-lessee shall, in all respects, cause the Improvements to be constructed and completed in accordance with then-current Land Development Policies, a current copy of which is attached hereto as Schedule "E".
  - (j) The Sub-lessee shall obtain and deliver to the Sub-lessor an irrevocable license in favour of each of the Sub-lessor and the AAJ to use any drawings, plans and specifications relating to any work performed by or on behalf of the Sub-lessee on the Premises from the person who created such drawings, plans or specifications, thereby allowing the Sub-lessor or the AAJ, as the case may be, to complete the construction thereof in the event the Sub-lessee fails to complete same. Such license shall expressly state that neither the Sub-lessor nor the AAJ shall be liable for any costs or expenses incurred or to be incurred in connection with the preparation of such drawings, plans or specifications or their subsequent use by the Sub-lessor or the AAJ in the circumstances contemplated herein, and that each of the Sub-lessor and the AAJ is entitled to use such drawings, plans and specifications for any purpose or purposes relating to the Premises whatsoever at any time without any further consent and without any further payment.
  - (k) The Sub-lessee shall supply the Sub-lessor with two complete and accurate copies of the record drawings of any work performed by or on behalf of the Sub-lessee no later than sixty (60) days following the completion of such work, or if required by the Sub-lessor in order to comply with the Head Lease, then "as built" drawings of any work performed by or on behalf of the Sub-lessee no later than sixty (60) days following such request of the Sub-lessor.

(b) Trade Fixtures

- (i) The Sub-lessee covenants and agrees to maintain upon the Premises throughout the Term equipment and other trade fixtures (collectively, "Trade Fixtures" which definition it is agreed does not include the Improvements) which are usual and appropriate for the Sub-lessee's operations. The Sub-lessee agrees that all Trade Fixtures shall be kept in good order and condition throughout the Term. The Sub-lessee further agrees that during the Term, it shall not remove any Trade Fixtures from the Premises other than in the ordinary course of its business. Notwithstanding the foregoing, the Sub-lessee may also remove Trade Fixtures from the Premises where the Sub-lessee substitutes therefor Trade Fixtures which are at least equal in value and function to the Trade Fixtures being removed.
- (ii) Provided that the Sub-lessee has paid all rent and is not otherwise in default, beyond any applicable cure period, of any material obligations under this Sub-Lease, the Sub-lessee shall be entitled, at the expiry or earlier termination of this Sub-Lease, to remove its Trade Fixtures from the Premises. In addition, the Sub-lessee agrees that



if the Sub-lessor should request that the Sub-lessee remove its Trade Fixtures from the Premises at the expiry or earlier termination of this Sub-Lease, the Sub-lessee shall remove same with all due dispatch. To the extent the Sub-lessee removes any Trade Fixtures from the Premises, the Sub-lessee shall repair all damage or injury caused to the Premises resulting from the installation and/or removal of same. The obligations set out herein shall survive the expiry or early termination this Sub-Lease.

- (iii) If within fifteen (15) days of the expiry or earlier termination of this Sub-Lease, the Sub-lessee has not removed its Trade Fixtures or any of its other property from the Premises, the Sub-lessor shall have no obligation with respect to same and may sell and/or destroy same and/or have same removed and/or stored at the expense of the Sub-lessee and/or may dispose of same, in any other manner whatsoever as the Sub-lessor, acting reasonably, may determine, all without payment of any compensation therefor to the Sub-lessee, and may be dealt with by the Sub-lessor in such manner as the Sub-lessor determines.

### **10.3 Expropriation**

- (a) If during the Term, title is taken to the whole or any part of the Airport (whether or not such part includes the Premises) by any competent authority under the power of eminent domain or by expropriation, which taking, in the reasonable opinion of the Sub-lessor does not leave a sufficient remainder to constitute an economically viable facility, the Sub-lessor may at its option, terminate this Sub-Lease on the date possession is taken by or on behalf of such authority. Upon such termination, the Sub-lessee shall immediately deliver up possession of the Premises, rent shall be payable up to the date of such termination and the Sub-lessee shall be entitled to be repaid by the Sub-lessor any rent paid in advance and unearned or an appropriate portion thereof.
- (b) In the event of any such taking referred to in paragraph (a) above and provided that either the Sub-lessor or the Sub-lessee has exercised their right to terminate under paragraph (a) or (c) respectively, as the case may be, then in such event the Sub-lessee agrees that the Sub-lessor shall be released from fulfilling its further obligations under this Sub-Lease. The Sub-lessee further agrees that it shall have no claim upon the Sub-lessor for the value of its property or the unexpired portion of the Term but the parties shall each be entitled to separately advance their claims for compensation for the losses of their respective interests and to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Sub-lessor specifically includes an award for the Sub-lessee, the Sub-lessor shall account therefor to the Sub-lessee.
- (c) In the event of any such taking referred to in paragraph (a) above which, in the reasonable opinion of the Sub-lessee, does not leave a sufficient remainder to constitute an economically viable facility, the Sub-lessee may, at its option, terminate this Sub-Lease on the date possession is taken by or on behalf of such authority. Upon such termination, the Sub-lessee shall immediately deliver up possession of the Premises, rent shall be payable up to the date of such termination and the Sub-lessee shall be entitled to be repaid by the Sub-lessor any rent paid in advance and unearned or an appropriate portion thereof. Notwithstanding, nothing herein contained shall prevent the Sub-lessee from separately advancing any claim against the expropriating authority for compensation as it deems fit.

## **SECTION 11: UTILITIES AND OTHER SERVICES**

### **11.1 Cost of Development**

The Sub-lessor is not obliged to provide any services or facilities or make any repairs or alterations to the Premises.

### **11.2 Utilities**

The Sub-lessor is not obliged to provide any Utilities or other related services to the Premises. Further, except as otherwise specifically contemplated by this Sub-Lease, the Sub-lessee is responsible for all costs relating to the provision and extension of Utilities to the Premises and for the use and operation of the Utilities. The Sub-lessee shall be responsible for all rates and charges for

Utilities and related services provided to or servicing the Premises, including all utility rates and charges for electricity, telephone, sewer, water and drainage and all local improvement charges relating thereto.

### **11.3 Municipal Services**

The Sub-lessee shall, at its own cost, be responsible for the construction, installation and maintenance of Municipal Services to connect the Premises to the water and sanitary sewerage systems at the nearest approved point of connection. All drawings, plans and specifications for connecting to any Municipal Services shall be approved by the Sub-lessor, the Saint James Parish Council and, where applicable, and any other authority, having jurisdiction, before work is commenced and all work shall be performed under the supervision of the Sub-lessor, and where applicable, the local authority having jurisdiction. The Sub-lessor represents and warrants to the Sub-lessee that Municipal Services about the Premises and are available to permit the Sub-lessee to connect thereto, subject to approval from the Saint James Parish Council as the Sub-lessee may reasonably require in accordance with Drawings and Specifications as approved by the Sub-lessor.

### **11.4 Drainage**

The Sub-lessee, at its own cost, shall ensure that the surface drainage water on the Premises will be properly controlled and discharged into the Airport's storm drainage system in a sound and proper fashion and shall, at its own cost, be responsible for constructing storm drainage management facilities compatible with the Airport's field drainage channels; and all drawings, plans and specifications for the construction of storm drainage management facilities for the Premises shall comply with all the specifications, standards and requirements of the Saint James Parish Council or other local authorities, if any, having jurisdiction and be subject to the prior approval of the Sub-lessor, the Saint James Parish Council and/or local authorities, if any, having jurisdiction before installation.

### **11.5 Interceptors**

Grease, oil and sand interceptors shall be provided by the Sub-lessee, at the Sub-lessee's sole cost, if required by any governmental or other proper authority or by the Sub-lessor, acting reasonably, and provided there is a legitimate need for same due to the Sub-lessee's operations. All interceptors shall be of a type and capacity approved by the Sub-lessor and/or the other appropriate authorities and shall be designed to meet a discharge of <10ppm total petroleum hydrocarbon (or TPH) and be readily accessible for cleaning and inspection. Such interceptors shall be maintained by the Sub-lessee, at the expense of the Sub-lessee, in continuous, efficient operation at all times.

### **11.6 Garbage**

The Sub-lessee shall, at its own cost, provide for the handling and off-Airport disposal of all trash, rubbish, waste material and other garbage to the satisfaction of the Sub-lessor acting reasonably. Storage of crates, cartons, barrels or other similar items shall not be permitted to be in public view at the Airport, and shall be covered, protected or otherwise restrained.

### **11.7 Airport Security**

The Sub-lessee acknowledges that the security obligations of the Sub-lessor and the Sub-lessee are established and governed by the Civil Aviation Act, Subsidiary Regulations thereto, and the Approved Airport Security Programme. The Sub-lessee shall comply with such Act, Subsidiary Regulations thereto and the requirements outlined in the MJB Security Brief located at Appendix III as revised from time to time. The measures established, include but are not limited to, measures relating to restricted area passes, personnel identification system, security and background clearance procedures, and security screening requirements, in accordance with Subparts 20.037 and 20.038 of the JCAA Regulations Twentieth Schedule (2004) as amended. The Sub-lessee shall pay to the Sub-lessor on demand all charges levied by the Sub-lessor with respect to security measures, provided such charges are consistently applied to other Airport occupants.

### **11.8 Interference with Air Navigation Facilities**

- (a) The Sub-lessee shall not:
  - (i) conduct any operation,

- (ii) erect or construct any building, structure, improvement or other work,
  - (iii) make any addition or alteration to any building, structure, improvement or other work,
  - (iv) install any facility or equipment in, over or upon the Premises or any part thereof; or
  - (v) do anything else, which will, in any manner,
- A. interfere with any electronic signal from any Air Navigation Facility;
  - B. cause physical or electronic interference or hazard to the navigation of any aircraft;
  - C. obstruct the line of sight from the air traffic control tower or the flight service station to any part of the Airport and approaches over which the air traffic control tower or the flight service station has the responsibility for the control or advice related to aircraft and vehicle movement;
  - D. violate any physical or other zoning requirements;
  - E. violate any safety-related standards, procedures, standards or recommended practices affecting aircraft safety or airport certification; or
  - F. adversely affect any Air Navigation Facility or any power system.

without the prior written approval of the Sub-lessor and/or the Jamaica Civil Aviation Authority.

- (b) Upon receipt of written notice from the Sub-lessor or the Jamaica Civil Aviation Authority, the Sub-lessee shall, at its own expense, immediately take all steps necessary to cease any activity causing any interference, obstruction or hazard and to rectify any problems arising in respect to matters referred to in subsection 11.8(a). Without limiting the generality of the foregoing, rectification may include, but shall not be limited to, discontinuing or modifying the Sub-lessee's operations; removing, rebuilding or repairing buildings, structures, improvements, facilities or equipment of the Sub-lessee.
- (c) In addition to any other right the Jamaica Civil Aviation Authority may have, and in addition to any other remedies the Sub-lessor may have pursuant to this Sub-Lease, the Sub-lessor, the Jamaica Civil Aviation Authority, as the case may be, may enter upon the Premises and remove any building, structure, improvement, work or other matter or thing causing any such interference, obstruction or hazard at the Sub-lessee's expense if the Sub-lessee fails to fulfill its obligations pursuant to subsection 11.8(b) above. The Sub-lessee shall forthwith reimburse the Sub-lessor for all expenses and costs incurred in relation thereto. No such entry for such purpose shall be deemed to be forfeiture or termination of this Sub-Lease and the Sub-lessee shall permit such entry.

## **SECTION 12: MAINTENANCE AND REPAIRS**

### **12.1 Maintenance and Repair**

The Sub-lessee shall, throughout the Term, at its own expense:

- (a) keep the Improvements, including the System, in a good state of repair, consistent with the standards of a First Class Facility at an international airport. For the purposes hereof and for the purposes of section 12.6 below, a "First Class Facility" means a facility that is built and is renovated from time to time so as to ensure in that the System is in a good state of repair and in a condition. "Repair" or "Repairs" (as used herein) shall include replacements and structural repairs. All repairs made by the Sub-lessee shall be no less in quality and class to the original work. To the extent that repairs involve structural or major portions of the System, all provisions of Section 10 shall apply thereto;
- (b) keep in good order and condition, reasonable wear and tear excepted, all chattels located in or about or serving the Premises; and
- (c) upon prior reasonable notice in writing from the Sub-lessor, make and do all repairs and maintenance which it has herein covenanted to perform.

## **12.2 Joint Condition Survey**

- (a) At the completion of the initial Improvements, representatives of the parties hereto shall jointly conduct a condition survey of the Premises. As a result of such survey, a report shall be prepared (“the Initial Condition Report”) shall be prepared and made a part hereof as Schedule “K”. The Initial Condition Report shall document the conditions of the Premises at the start of the Concession and shall be the base standard for all subsequent condition reports.
- (b) At the start of each Lease Year during the continuance of this Sub-Lease and upon the expiration or termination hereof (unless circumstances warrant more frequent inspections), the parties shall jointly conduct a condition survey of the Premises and shall prepare a report (“the Annual Condition Report” or an “Interim Condition Report”) as the case may be, which shall set out any deficiencies noted in the condition of the Premises and the facilities thereon. Any deficiencies, normal wear and tear excepted, shall be corrected within the period specified in the written notice from the Sub-lessor accompanying the Annual Condition Report or Interim Condition Report as the case may be provided that if the Concessionaire shall be diligently pursuing corrective action such period shall be extended for such time as may be required to completely correct such deficiency.
- (c) The Sub-lessor shall have no responsibility for maintenance, repair or replacement of the Premises or any Improvements. The Sub-lessee, at its sole cost and expense, shall provide all custodial and other service(s) required by the Sub-lessee within the Premises, and the Sub-lessor shall have no responsibility or obligation therefor.

## **12.2 Landscaping and Paved Areas**

The Sub-lessee shall, at its expense, maintain the landscaping and maintain and repair all paved areas on the Premises and shall keep the Premises neat and tidy at all times and free from any accumulation of water or garbage.

## **12.3 View Repairs**

The Sub-lessor, upon no less than twenty-four (24) hours’ prior written notice, may enter upon the Premises at any reasonable time during business hours (and, without any prior notice at any time during any emergency or perceived emergency) to view the state of repair and the Sub-lessee shall repair according to notice in writing from the Sub-lessor (acting reasonably) to do so, subject to the exceptions contained in this Section 12 and subject to the terms and conditions of this Sub-Lease. In cases of emergency, the Sub-lessor its officers, servants or agents, shall at all times and for all purposes have immediate full and free access to the Premises, Improvements, structures and facilities.

## **12.4 Sub-lessor May Repair**

If the Sub-lessee fails to repair or is not proceeding diligently to repair according to the terms and conditions of this Sub-Lease and upon prior written notice from the Sub-lessor within fourteen (14) days of receipt thereof, or forthwith in the event of an emergency, the Sub-lessor may, (but is not obligated) make such repairs without liability to the Sub-lessee for any loss or damage that may occur to the Sub-lessee's merchandise, fixtures or other property, or to the Sub-lessee's business by reason thereof unless such loss or damage is caused by the negligence of the Sub-lessor, its agents, employees, contractors or those for whom it is in law responsible, and upon completion thereof, the Sub-lessee shall pay, on demand, as Additional Rent, the Sub-lessor's costs of making such repairs together with an administration fee of fifteen percent (15%) of such costs.

## **12.5 Inspection by Public Officials**

The Sub-lessee agrees to reasonably co-operate with public officials who have the right to inspect the Premises and any improvements constructed therein or thereon.

## **12.6 Damage or Destruction**

- 12.6.1 In the event any of the Improvements are wholly or partially damaged or destroyed by fire or by any other peril, the Sub-lessee shall give the Sub-lessor prompt notice thereof. The Sub-

lessee shall, unless the Sub-lessee and the Sub-lessor agree otherwise or unless prevented by Force Majeure, promptly, continuously and diligently, at its own expense, repair, replace, restore or reconstruct any such Improvements to a standard and quality consistent with that of a First Class Facility at an international airport. All repair, replacement, restoration and reconstruction shall meet or exceed the standards of all applicable laws and codes, and shall satisfy the requirements of this Sub-Lease. From and after the date of occurrence of the damage and until the Premises are again reasonably capable of operation the Rent payable shall abate in proportion to the part or parts of the Premises not reasonably capable of operation. For the avoidance of doubt, abatement of Annual Base Rent or Revised Annual Base Rent is only applicable where same is due for payment and the damage is still subsisting as at the date payment becomes due under this Sub-Lease. In the event the Sub-lessee does not promptly, continuously and diligently, at its own expense, repair, replace, restore or reconstruct any such Improvements to a standard and quality consistent with that of a First Class Facility at an international airport within a reasonable period of time as determined in the opinion of the Consultant as certified to the Sub-lessor, then in such event, the Sub-lessor, upon sixty (60) days' prior written notice to the Sub-lessee, may terminate this Sub-Lease and shall be paid from the proceeds of insurance and all other monies payable in respect of such destruction or damage an amount equivalent to the loss of revenue thereby incurred by the Sub-lessor for the remainder of the Term and the provisions of clauses 12.6(c)(C),(D),(E),(F) and (G) shall apply, *mutatis mutandis*, and for the purposes of such clauses the Effective Date of Early Termination shall be deemed to be the day next following the expiry of the sixty day notice period contemplated above.

12.6.2 Subject to subsections 12.6(a) above and 12.6(c) below, the partial destruction or damage or complete destruction by fire or other casualty of all or any part of the Improvements shall not terminate this Sub-Lease or entitle the Sub-lessee to surrender the Premises.

12.6.3 If due to fire or other casualty, the System is destroyed or damaged (herein called the "Event") and in the opinion of the Consultant as certified to the Sub-lessor, the time required for the repair with due diligence of the destruction or damage to such System exceeds six (6) months, then provided the Event occurs within the last four (4) years of the Term, the Sub-lessee is not in default under this Sub-Lease and the Sub-lessee has obtained the prior written consent of all encumbrancers, if any, of the Sub-lessee's leasehold interest, then ;

the Sub-lessee shall have the right to terminate this Sub-Lease (the "Termination Option") on the following terms and conditions:

- (a) the Termination Option shall only be exercisable in the event that there is then in force and payable a policy or policies of insurance providing for the payment of the replacement cost of the System, and that the proceeds thereof shall be equivalent to a payment being made on a replacement cost basis insurance policy, whether or not an insured shall rebuild the System so damaged or destroyed (the "Insurance Proceeds"), and the Insurance Proceeds shall be paid whether or not the insured rebuilds the System;
- (b) the Sub-lessee shall have the right by written notice (the "Early Termination Notice") to elect to exercise the Termination Option within a period of ninety (90) days following the Event. In the event the Sub-lessee elects to exercise the Termination Option, the Early Termination Notice must specify the date upon which this Sub-Lease shall be terminated (the "Effective Date of Early Termination");
- (c) in the event that the Sub-lessee elects to exercise the Termination Option, then on or before the Effective Date of Early Termination, the Sub-lessee shall assign to the Sub-lessor that portion of the Insurance Proceeds equivalent to the Sub-lessor's loss of revenue projected to be earned under this Sub-lease including but not limited to Rent and Concession Fee for the remainder of the Term;
- (d) on the Effective Date of Early Termination, the Sub-lessee shall deliver vacant possession of the Premises free and clear of any encumbrances of any nature or kind whatsoever;

- (e) this Sub-Lease (and all of the Sub-lessee's right, title and interest therein and thereto) shall be deemed to be terminated on the Effective Date of Early Termination provided that the provisions of this subsection 12.6.3 have been satisfied in full, and;
- (f) without limiting the generality of clause (e) above, prior to termination of this Sub-Lease, the Sub-lessee, unless otherwise requested by the Sub-lessor, at the Sub-lessee's sole cost, shall have demolished all or part of the Improvements and returned the lands comprising the Premises on which such Improvements stood to a vacant condition and shall have conducted the environmental audit(s) to be completed in the same manner as contemplated by section 9.4 and to remove and remediate all Environmental Contaminants in the same manner as contemplated by section 9.4 and section 10.2(b). Without limiting the generality of the foregoing, the Sub-lessee, at its sole cost, shall reinstate the turf, remove or cause to be removed such Improvements, fill up or cause to be filled up all excavations made in erecting or removing the said Improvements and replace or cause to be replaced all surface soil and sod and leave the area upon which the said Improvements had stood in a neat and tidy condition. The Sub-lessor agrees that to the extent that the Sub-lessee is requested to demolish all or any portion of the Improvements under this clause (G), direct costs borne by the Sub-lessee with respect to such demolition shall be reimbursed by the Sub-lessor, to the extent that Insurance Proceeds have been received by the Sub-lessor, upon receipt of appropriate accounts therefor from the Sub-lessee.

## **SECTION 13: ASSIGNMENT OR SUBLETTING**

### **13.1 Consent to Assignment or Subletting**

This Sub-Lease, except as specifically provided herein, shall not be assigned, nor shall the Premises be sublet or licensed by the Sub-lessee, whether in whole or in part, and whether by operation of law or otherwise, nor shall the Sub-lessee part with possession of or permit the occupation or use of all or part of the Premises by any party not permitted hereunder (each such event being referred to herein as a "Transfer"), without the prior written consent of the Sub-lessor, which consent may not be unreasonably withheld or delayed. In any event, the Sub-lessee agrees that in seeking the Sub-lessor's consent to a Transfer:

- (i) the Sub-lessee shall have furnished to the Sub-lessor a true copy of the offer received from the proposed assignee or other transferee and shall have furnished such information as is available to the Sub-lessee, if any, regarding the reputation, financial standing and business of the proposed assignee or other transferee;
- (ii) the Sub-lessor shall be satisfied, acting reasonably, that the proposed assignee or other transferee has or possesses the reputation, business expertise and background and the financial resources necessary to enable it to perform the covenants of the Sub-lessee herein contained;
- (iii) the proposed assignee or other transferee shall expressly agree in writing with the Sub-lessor to be bound by and perform the covenants of the Sub-lessee contained in this Sub-Lease insofar as they relate to the premises being transferred, subleased or as they relate to the possession or use granted; and
- (iv) the proposed assignee, the proposed assignee or other transferee delivers to the Sub-lessor a security deposit or a valid letter of credit or Bank Guarantee (which shall be open, unconditional and irrevocable) issued by a financial institution acceptable to the Sub-lessor in a total amount of not less than the total amount of three (3) months' Annual Base Rent or Revised Annual Base Rent, as the case may be, and Additional Rent payable during the next three (3) months of the Term, all as reasonably estimated by the Sub-lessor, calculated as and from the date upon which the proposed Transfer takes effect (which will stand in place of the Sub-lessee's security provided pursuant to Sections 6.1 and 6.2 and within sixty (60) days following such delivery, provided that the Sub-lessee has paid all amounts payable under this Sub-Lease, including all costs and expenses incurred by the Sub-lessor in correcting or satisfying any default or fulfilling any obligation of the Sub-lessee under this Sub-Lease and has otherwise fulfilled its obligations under this Sub-Lease, the Sub-lessor shall release to the Sub-lessee any letter of credit or cash security deposit

which the Sub-lessor than holds, without any interest). The security deposit or the letter of credit, as the case may be, shall be in a form satisfactory to the Sub-lessor and shall be held by the Sub-lessor as security for the performance of the proposed assignee's or other transferee's obligations under the Lease and the provisions of SECTION 6 shall apply with respect thereto with all necessary changes being deemed incorporated herein.

### **13.2 Subsequent Assignment or Subletting; Joint and Several Liability**

- (a) The Sub-lessee agrees that any written consent provided by the Sub-lessor to a Transfer shall not constitute a waiver of requiring its written consent to any subsequent Transfer.
- (b) The Sub-lessee agrees that upon any Transfer, the Sub-lessee shall remain jointly and severally liable with the assignee or other transferee thereunder for all obligations arising under this Sub-Lease and shall not be released from performing any of the terms, conditions and covenants of this Sub-Lease.

### **13.3 Change in Control**

If, after the date of execution of this Sub-Lease, any shares of any class of the Sub-lessee are transferred by sale, assignment, operation of law or other disposition, or issued, cancelled or redeemed, so as to result in a change in effective voting or other control of the Sub-lessee, or if any other steps are taken to effect a change in control (directly or indirectly) of the Sub-lessee (hereinafter collectively, a "Transfer"), this will be considered an assignment by the Sub-lessee of this Sub-Lease to which this SECTION 13 shall apply including but not limited to the requirement to obtain the Sub-lessor's prior written consent.

### **13.4 Assignment by the Sub-lessor**

The Sub-lessor, at any time and from time to time, may where so permitted, sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in the Airport. Provided that the party acquiring such interest shall agree, so long as it holds such interest, to assume and to perform each of the covenants, obligations and agreements of the Sub-lessor under this Sub-Lease in the same manner and to the same extent as if originally named as the Sub-lessor in this Sub-Lease, the Sub-lessor shall thereupon be released from all of its covenants and obligations under this Sub-Lease and the Sub-lessee shall look solely to the Sub-lessor's successor-in-interest.

### **13.5 Sub-lessor's Consent**

The Sub-lessee hereby specifically acknowledges and agrees that it shall be reasonable for the Sub-lessor to withhold its consent to any request for consent to a Transfer made by the Sub-lessee pursuant to Section 13.1 above where the purpose of any such Transfer is to permit an assignee or other transferee to develop the Premises and/or construct the Improvements for and on behalf of the Sub-lessee.

### **SECTION 14: [INTENTIONALLY DELETED]**

## **SECTION 15: INSURANCE AND INDEMNITY**

### **15.1 Comprehensive General and Environmental Impairment Liability Insurance**

- (a) The Sub-lessee shall take out and keep in force throughout the Term once it occupies the Premises, at its own cost, comprehensive general liability insurance against claims for personal injury, death, property damage, or third party or public liability claims or loss, from any cause, arising out of all occurrences, operations, or use of the Premises by the Sub-lessee, or of the acts or omissions of the Sub-lessee, its agents, servants or employees and all other persons in occupation or use of the Premises, indemnifying and protecting the Sub-lessor and the Sub-lessee to a limit of not less than USD Five Million Dollars (\$5,000,000.00), or such other amounts as the Sub-lessor, acting reasonably, may require from time to time, inclusive, in respect of each accident or occurrence. Coverage shall include, but not be limited to the following: Sub-lessee's legal liability; environmental impairment liability (unless provided under separate environmental impairment liability insurance); and non-owned automobile liability for non-owned vehicles; blanket contractual liability; completed operations liability and owners/operators protective liability in the event of construction, alteration or demolition operations on the Premises (unless such coverages are provided for elsewhere in this Sub-Lease).
- (b) The Sub-lessee shall take out and keep in force throughout the Term, and during such other time as the Sub-lessee occupies the Premises, at its own cost, environmental impairment insurance coverage, if underground storage tanks are installed or located upon the Premises and pollution legal liability coverage if above-ground storage tanks are installed or located upon the Premises. Coverage shall insure against claims for personal injury, death, property damage, or third party or public liability claims or loss, from any cause, arising out of all occurrences, operations, or use of the Airport, including the Premises by the Sub-lessee, or of the acts or omissions of the Sub-lessee, its agents, servants or employees and all other persons in occupation or use of the Premises, indemnifying and protecting the parties to a limit of not less than Five Million Dollars (\$5,000,000.00), or such other amounts as the Sub-lessor, acting reasonably, may require from time to time, inclusive, in respect of each accident, incident or occurrence. In the event the Sub-lessee is permitted to sublet part of the Premises to a sub-lessee, the Sub-lessee shall cause such sub-lessee to take out and keep in force insurance comparable to the insurance required under this paragraph.

### **15.2 Automobile Insurance**

The Sub-lessee shall take out and keep in force throughout the Term and during such other time as the Sub-lessee occupies the Premises, at its own cost, standard owners form automobile policy for vehicles, if any, used in connection with the Sub-lessee's operations, including comprehensive liability insurance.

### **15.3 Broad Form Property Insurance**

The Sub-lessee shall, or cause the Operator to, effect not later than upon completion of construction of the System and the Improvements and shall keep in force throughout the Term and during such other time as the Sub-lessee occupies the Premises, at its own cost and expense, insurance on the System and all Improvements in the name of the Sub-lessee (with the Operator not being an insured or loss payee under such insurance) without any rights of cross claim or subrogation against the Sub-lessor from loss from:

- (a) fire or other perils as may from time to time be included in the standard fire insurance additional peril supplementary contract generally available in Jamaica;
- (b) risks normally insured against in Jamaica for a building of construction, location and use similar to the System; and
- (c) risks which the Sub-lessor may from time to time reasonably require to be insured against.

Insurance coverage shall be for the full replacement value of the Improvements, including the System and all other buildings and the replacement value of fixtures (exclusive of the cost of foundations) and shall, in any case, be for an amount sufficient to prevent the Sub-lessor being considered a co-



insurer with the insured. The policies of insurance effected under this paragraph shall if required, include the interest of any encumbrancers of the Sub-lessee's leasehold interest.

#### **15.4 The Insureds**

The insurance policy or policies referred to in Section 15.1 will name the Sub-lessor as an additional insured and the policy or policies referred to in Section 15.3 shall name the Sub-lessor as a loss payee in accordance with its interest. The policy or policies shall contain a waiver of rights of subrogation against the Sub-lessor and shall contain "cross liability" and "severability of interest" clauses protecting said the Sub-lessor against claims by the Sub-lessee as if said parties were separately insured and will contain a clause that the insurer will not cancel or change or refuse to renew the insurance without giving the Sub-lessor thirty (30) days' prior written notice. The Sub-lessee shall pay all premiums and costs of insurance required herein. All policies of insurance will be with insurers acceptable to the Sub-lessor, acting reasonably, and in a form satisfactory to the Sub-lessor, acting reasonably, and the Sub-lessee will see that there is delivered to the Sub-lessor certificates of required insurance hereunder and any renewals. If the Sub-lessee fails to take out or keep in force any policy of insurance referred to herein the Sub-lessor may do so and pay the premium and, in that event, the Sub-lessee will pay to the Sub-lessor forthwith the amount so paid as premium.

#### **15.5 Cancellation of Insurance**

The Sub-lessee shall notify the Sub-lessor as soon as practicable of any cancellation or intended cancellation by the insurer of a policy herein. Each policy shall provide that no cancellation shall be effective without thirty (30) days' prior written notice by the insurer to the Sub-lessor. If the insurance policy referred to herein is cancelled or threatened by the insurer to be cancelled, or the coverage thereunder reduced or threatened to be reduced by the insurer, and if the Sub-lessee fails to remedy the condition giving rise to cancellation, threatened cancellation, reduction or threatened reduction of coverage within forty-eight (48) hours after written notice thereof by the Sub-lessor, the Sub-lessor may immediately either:

- 15.5.1 Re-enter the Premises, including the Improvements, whereupon SECTION 20 will apply [with the notice requirements set out in section 20.10 being deemed to have been satisfied], or
- 15.5.2 enter the Premises and Improvements and remedy the condition giving rise to the cancellation or reduction or threatened cancellation or reduction, and the Sub-lessee will pay to the Sub-lessor the cost thereof on demand as Additional Rent (failing which, the provisions of SECTION 20 below shall apply), and the Sub-lessor will not be liable for damage or injury caused to property of the Sub-lessee or others located on the Premises as a result of the entry.

#### **15.6 Compliance**

The Sub-lessee shall not do or omit to do or suffer anything to be done or omitted to be done on the Premises which will in any way impair or invalidate the insurance policies. All insurance required to be provided by, or on behalf of, the Sub-lessee as required herein shall be subject to such insurance coverages being commercially available and shall be subject to standard industry exclusions and limitations.

#### **15.7 AAJ**

If, during the Term, the AAJ establishes new or amended insurance requirements which apply to the Premises under the Head Lease or otherwise, the Sub-lessee agrees to amend or supplement the coverage identified herein and maintain, at its own cost, such amended or supplemented insurance coverage. Any such amendments or supplements to insurance coverage arising out of this section are to be determined by the Sub-lessee and the Sub-lessor, acting reasonably, and are to be consistent with the applicable new or amended insurance requirements established by the AAJ.

### **SECTION 16: INDEMNITY**

#### **16.1 Sub-lessee's Indemnity**

(a) Unless caused by the gross negligence or intentional wrongdoing and conduct of the Sub-lessor, or any agent, employee, contractor, invitee, or Sub-lessee of the Sub-lessor, or anyone else for whom

the Sub-lessor may be responsible for at law, the Sub-lessee shall at all times, indemnify and save harmless the Sub-lessor (including their respective directors, officers, agents and employees and those for whom each is responsible for at law) of and from all loss and damage and all actions, claims, costs, demands, expenses, fines, liabilities and suits of any nature whatsoever for which the Sub-lessor, as the case may be, shall or may become liable, incur or suffer by reason of a breach, violation or non-performance by the Sub-lessee of any covenant, term or provision hereof or by reason of any builders' or other liens for any work done or materials provided or services rendered for alterations, improvements or repairs, made by or on behalf of the Sub-lessee to the Premises, or by reason of any injury occasioned to or suffered by any person or damage to any property, by reason of any wrongful act or omission, default or negligence on the part of the Sub-lessee or any of its agents, Sub-lessees, contractors, employees, invitees, sub lessees or Sub-lessees in or about the Airport. The Sub-lessee's obligations under this section 16.1 shall survive the termination of this Sub-Lease, whether by effluxion of time or otherwise.

(b) The Sub-lessor shall at all times, indemnify and save harmless the Sub-lessee (including its directors, officers, agents and employees) of and from all loss and damage and all actions, claims, costs, demands, expenses, fines, liabilities and suits of any nature whatsoever for which the Sub-lessee shall or may become liable, incur or suffer by reason of a breach, violation or non-performance by the Sub-lessor of any covenant, term or provision hereof or for any work done or materials provided or services rendered for alterations, improvements or repairs, made by or on behalf of the Sub-lessor to the Premises, or by reason of any injury occasioned to or suffered by any person or damage to any property, by reason of gross negligence on the part of the Sub-lessor or any of its agents, contractors, sub-contractors or employees in or about the Airport. The Sub-lessor's obligations under this SECTION 16.1(b) shall survive the termination of this Sub-Lease, whether by effluxion of time or otherwise.

## **16.2 Personal Injury and Property Damage**

Notwithstanding any other provision in this Sub-Lease to the contrary, the Sub-lessor (including its officers, agents and employees) shall not, under any circumstances, be liable or responsible in any way for:

- (a) any personal injury or consequential damage of any nature whatsoever that may be suffered or sustained by the Sub-lessee or any other person or any property belonging to the Sub-lessee or any agent, employee, contractor, invitee, or Sub-lessee of the Sub-lessee or any other person while such property is on or about the Premises or the Airport:
  - (i) caused by failure, by reason of breakdown or other cause, to supply adequate drainage, or by interruptions of any utility or elevator or escalator or other services, or by steam, water, rain, snow, or other substances leaking into, issuing or flowing into any part of the Premises or from the water, steam, sprinkler or drainage pipes or plumbing of the Airport or from any other place or quarter;
  - (ii) caused by anything done or omitted to be done by any other Sub-lessee of the Airport;
  - (iii) however caused, if the Sub-lessor or their respective agents, contractors or employees enter upon the Premises in the case of an emergency; and
  - (iv) resulting in any way from any act or omission by any officer, agent or employee of the Saint James Parish Council related to the approval of the development of the Premises;
- (b) any loss or damage of any nature whatsoever, however caused, to books, records, files, money, securities, negotiable instruments, papers or the valuables of the Sub-lessee;
- (c) any business, economic or indirect loss or damage of the Sub-lessee of any nature whatsoever, however caused; or
- (d) any loss against which the Sub-lessee is obliged to insure against hereunder or has insured against.

## **16.3 Sub-Lessor Not Responsible**

The Sub-lessee acknowledges and agrees that in no event is the Sub-lessor liable or responsible in any way to the Sub-lessee or any other person for any injury, loss, loss of profits, damages, consequential

or indirect damages or for any claims resulting from any matter affecting any Airport infrastructure, whether or not the Airport infrastructure, as the case may be, was constructed by the Sub-lessor unless it has been independently proven that such damages were caused or contributed to by the gross negligence, of the Sub-lessor or any person for whom the Sub-lessor may be responsible in law.

## **SECTION 17: WASTE AND GOVERNMENT REGULATIONS**

### **17.1 Nuisance**

The Sub-lessee shall not do or omit or permit to be done or omitted anything which could damage the Airport or injure or impede the business or operations of the Sub-lessor or of other Sub-lessees or users of the Airport or which shall or might result in any nuisance in or about the Premises whether to the Sub-lessor, any Sub-lessee of the Sub-lessor or any other party, the whole as determined by the Sub-lessor, acting reasonably. In any of the foregoing events, the Sub-lessee shall forthwith remedy the same and if such thing or condition shall not be so remedied within the periods set out under this Sub-Lease, the Sub-lessor may correct such situation at the expense of the Sub-lessee and the Sub-lessee shall pay such expense, together with an administration fee of 15% of such expense, to the Sub-lessor, on demand, as Additional Rent.

### **17.2 Government Regulations**

The Sub-lessee shall, at its own cost, in all respects abide by and comply with all applicable rules, regulations, by-laws and requirements of the Government of Jamaica or any other governmental authority whatsoever that is now in force or which may hereafter be in force and with all local authorities, police, health or fire regulations or by-laws, in any manner affecting the Premises and the Improvements.

### **17.3 Fire Prevention**

The Sub-lessee shall, at its own expense, take all precautions to prevent fire from occurring in or about the Premises, and shall observe and comply with all laws and regulations respecting fires at the Airport, and with all instructions given from time to time by the Sub-lessor and local authorities, if any, having jurisdiction with respect to fires, regulation, prevention and safety.

### **17.4 Management and Control by Sub-lessor**

The Sub-lessor has the exclusive right to manage, operate and control the Airport and from time to time to establish, modify and enforce the Airport Rules and Regulations (a copy of which is attached at Appendix I) in force from time to time regarding the use, occupancy, maintenance and operation of the Airport and the Premises situate thereon and the rules and regulations in all respects will be observed and performed by the Sub-lessee, its officers, employees and invitees.

### **17.5 Civil Aviation Regulations**

The Sub-lessee, its invitees, Sub-lessees, officers, employees and agents, shall, at all times during the currency of this Sub-Lease, observe and comply with the provisions of the Civil Aviation Act. Without limiting the generality of the foregoing, the Sub-lessee shall ensure compliance with those aspects of the Civil Aviation Act including, without limitation, the Civil Aviation Regulations, concerning inter alia, security and safety. In addition, the Sub-lessee shall ensure compliance with all directives, orders, stipulations and requirements issued by the Sub-lessor or air traffic control personnel at the Airport.

### **17.6 Noise Management**

Without limiting any other obligations imposed upon the Sub-lessee under this Sub-Lease, the Sub-lessee agrees to abide by and comply with any requirements under the Civil Aviation Regulations regarding Noise Management.

## **SECTION 18: ACCESS BY SUB-LESSOR**

### **18.1 Entry by the Sub-lessor**

- (a) Except where the Sub-lessor intends to terminate this Sub-Lease, no entry by or on behalf of the Sub-lessor pursuant to this Section 18.1 and no act on the Premises by or on behalf of the Sub-lessor thereunder shall be deemed to be a forfeiture or termination of this Sub-Lease, and the Sub-lessee shall permit such entry.
- (b) The Sub-lessee further covenants with the Sub-lessor to provide the Sub-lessor, its servants, officers, employees, agents and persons authorized by the Sub-lessor upon no less than twenty-four (24) hours prior written notice, with any information or document relevant to this Sub-lease, including but not limited to the calculation of Concession Fee, in order to determine the extent of compliance by the Sub-lessee with the Lease and all applicable laws and the Sub-lessee shall permit access to the Leased Premises for the purpose of collecting any such documentation from the Sub-lessee.

## **SECTION 19: SUB-LESSEE RESTRICTIONS**

### **19.1 Dangerous Goods**

Goods of an explosive, dangerous, inflammable or noxious nature or character may only be stored upon the Premises or transported by the Sub-lessee in the ordinary course of its operations if done so in full compliance with all applicable laws, regulations, and other requirements of all applicable government authorities.

### **19.2 Advertising and Displays**

Without limiting the generality of subsection 8.3(b) above respecting advertising, the Sub-lessee agrees not to construct, erect, place or install on the Premises, including the exterior (and the interior where visible from the exterior) of the Improvements, any poster, advertising, sign or display, electrical or otherwise, without first obtaining the consent in writing, of the Sub-Lessor's Manager of Commercial Business Development & Marketing, such consent not to be unreasonably withheld.

## **SECTION 20: DEFAULT, REMEDIES, TERMINATION**

### **20.1 Default**

If and whenever:

- (a) the Sub-lessee shall be in default in the payment of any money, whether hereby expressly reserved or deemed as ABR or Concession Fee, or any part thereof, and such default shall continue for five (5) days following written notice by the Sub-lessor requiring the Sub-lessee to pay the same;
- (b) The Sub-lessee's leasehold interest hereunder, or any goods, chattels or equipment of the Sub-lessee located upon the Premises, shall be taken or seized in execution or attachment, or if any writ of execution shall issue against the Sub-lessee, or Sub-lessee shall become insolvent or commit an act of bankruptcy or become bankrupt or take the benefit of any legislation or Act that may be in force for bankrupt or insolvent debtors or become involved in voluntary or involuntary winding up, dissolution or liquidation proceedings, or a receiver or receiver-manager shall be appointed for the affairs, business, property or revenues of the Sub-lessee;
- (c) the Sub-lessee shall fail to commence, diligently pursue and complete the Sub-lessee's work to be performed pursuant to this Sub-Lease or other agreement signed by the parties, or vacate or abandon the Premises, or fail or cease to operate or otherwise cease to conduct its business from the Premises, or if the Sub-lessee shall assign, sublet or otherwise transfer any interest in this Sub-Lease or with respect to the Premises other than as permitted by SECTION 13, or fail to cure a default under SECTION 14, or make a bulk sale of its goods and assets which has not been consented to by the Sub-lessor in accordance with the requirements of this Sub-Lease or move or commence,

attempt, or threaten to move its goods, chattels and equipment off of the Premises other than as permitted by this Sub-Lease; or

- (iii) the Sub-lessee shall not observe, perform and keep each and every of the covenants, agreements, stipulations, obligations, conditions and other provisions of this Sub-Lease to be observed, performed and kept by the Sub-lessee.

and such default continues, in the case of the Sub-lessee's monetary payments, beyond the period stipulated in subsection 20.1(a) or, in the case of any other default, fourteen (14) days following receipt of written notice from the Sub-lessor requiring that the Sub-lessee remedy, correct or comply or, in the case of any such default which would reasonably require more than fourteen (14) days to rectify, unless the Sub-lessee shall commence rectification within the said fourteen (14) day notice period and thereafter promptly and diligently and continuously proceed with the rectifications of any such default, then, and in each of such cases, and at the option of the Sub-lessor, the current month's ABR or Revised ABR, as the case may be, then due hereunder, together with ABR and/or Revised ABR, as the case may be, for the three (3) months next ensuing and Property Taxes for the then-current calendar year shall become immediately due and payable and/or this Sub-Lease may be terminated and the Term shall then immediately become forfeited and void, and the Sub-lessor may without notice or any form of legal process whatever forthwith re-enter the Premises or any part thereof and in the name of the whole repossess and enjoy the same as of its former estate, anything contained herein to the contrary notwithstanding.

## **20.2 Sub-lessor May Perform**

If the Sub-lessee shall fail to observe, perform or keep any of the provisions of this Sub-Lease to be observed, performed and kept by the Sub-lessee, subject to rectification within the period set out in subsection 20.1(b), the Sub-lessor may, but shall not be obliged to, at its discretion and without prejudice, rectify the default of the Sub-lessee, whether or not performance by the Sub-lessor on behalf of the Sub-lessee is otherwise expressly referred to in the applicable section of this Sub-Lease. For such purpose, the Sub-lessor may make any payment and or do or cause to be done such things as may be required including, without limiting the generality of the foregoing, entry upon the Premises. Any such performance by or at the behest of the Sub-lessor shall be at the expense of the Sub-lessee and the Sub-lessee shall pay to the Sub-lessor, on demand, as Additional Rent, the cost thereof as substantiated independently of the Parties, together with an administration fee of 5% of such cost. In no event shall the provisions of this Section 20.2 be deemed to override any other provisions of this Sub-Lease dealing with specific matters.

## **20.3 Cost and Interest**

All reasonable costs, expenses and expenditures, including the reasonable legal costs incurred by the Sub-lessor as substantiated independently of the Parties as a result of any default by the Sub-lessee, shall forthwith on demand be paid by the Sub-lessee as Additional Rent, together with interest, at the rate specified in Section 4.9, from the date any such costs, expenses and expenditures are incurred by the Sub-lessor until the same are fully paid and satisfied.

## **20.4 Vacate Upon Termination, Survival**

At the termination of this Sub-Lease, whether by effluxion of time or otherwise, the Sub-lessee shall vacate and deliver up possession of the Premises in the same condition as the Sub-lessee is obliged to maintain the Premises and Improvements thereon, subject to the exceptions from the Sub-lessee's obligation to repair in accordance with subsection 12.6(c), and subject to the Sub-lessee's rights and obligations in respect of removal in accordance with subsection 10.2(b), and shall surrender all keys to the Premises to the Sub-lessor at the place then fixed for payment of ABR and shall inform the Sub-lessor of all combinations on locks, safes and vaults, if any, upon the Premises. Notwithstanding this provision, nothing herein shall prevent the Sub-lessee from pursuing any contractual or legal steps it deems fit upon the exercise by the Sub-lessor of the rights hereby granted.

## **20.5 Additional Rights on Re-Entry**

If the Sub-lessor shall re-enter the Premises or terminate this Sub-Lease, then:

- (a) Notwithstanding any such termination or the Term thereby becoming forfeited and void, the provisions of this Sub-Lease relating to the consequences of termination shall survive;

- (b) the Sub-lessor may use such force as it may deem necessary for the purpose of gaining admittance to and taking possession of the Premises and the Sub-lessee hereby releases the Sub-lessor from all actions, proceedings, claims and demands whatsoever for or in respect of any such forcible entry or any loss or damage in connection therewith or consequential thereupon, notwithstanding this provision, nothing herein shall prevent the Sub-lessee from pursuing any contractual or legal steps it deems fit upon the exercise by the Sub-lessor of the rights hereby granted ;
- (c) the Sub-lessor may re-let the Premises or any part thereof for a term or terms which may be less or greater than the balance of the Term and may grant reasonable concessions in connection therewith; and
- (d) the Sub-lessee shall pay to the Sub-lessor on demand such reasonable expenses as the Sub-lessor may incur or has incurred in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Sub-lessee, realizing upon assets seized, including without limitation brokerage, legal fees and disbursements, and the expenses of keeping the Premises in good order, repairing the same and preparing them for re-letting.

#### **20.6 Re-letting for Sub-lessee's Account**

Whenever the Sub-lessor becomes entitled to re-enter upon the Premises under any provision of this Sub-Lease, the Sub-lessor, in addition to all other rights it may have, shall have the right as agent of the Sub-lessee to enter the Premises and re-let them and to receive the rent therefor and as agent of the Sub-lessee to take possession of any furniture or other property therein and to sell the same at public or private sale and to apply the proceeds thereof and any rent derived from re-letting the Premises upon account of all sums due and to become due to the Sub-lessor under this Sub-Lease and the Sub-lessee shall be liable to the Sub-lessor for the deficiency, if any.

#### **20.7 No Waiver**

No provision of this Sub-Lease shall be deemed to have been waived by the Sub-lessor unless a written waiver from the Sub-lessor has first been obtained and without limiting the generality of the foregoing, no acceptance of monies subsequent to any default and no condoning, excusing or overlooking by the Sub-lessor on previous occasions of any default nor any earlier written waiver shall be taken to operate as a waiver by the Sub-lessor or in any way to defeat or affect the rights and remedies of the Sub-lessor.

#### **20.8 Remedies Cumulative**

No reference to or exercise of any specific right or remedy by any of the Parties shall prejudice or preclude the that Party from any other remedy, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but a Party may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the Sub-lessor shall be entitled to commence and maintain an action against the Sub-lessee to collect any ABR or Concession Fee not paid when due, without exercising the option to terminate this Sub-Lease pursuant to section 20.1.

#### **20.09 Holding Over**

If the Sub-lessee continues to occupy the Premises with or without the written consent of the Sub-lessor after the expiration or other termination of the Term, then with or without any further written agreement, the Sub-lessee shall be a monthly lessee at the aggregate of:

- (a) a minimum monthly rent equal to 125% of the monthly ABR or Revised ABR payable during the last month of the Term; and
- (b) all other amounts payable hereunder as herein provided;

and subject always to all of the other provisions in this Sub-Lease insofar as the same are applicable to a month to month tenancy, and a tenancy from year to year shall not be created by implication of law.

## **20.10 Waiver of Rights of Redemption**

The Sub-lessee hereby expressly waives any and all rights of redemption or relief from forfeiture granted by or under any present or future laws in the event of the Sub-lessee being evicted or dispossessed from the Premises for any default hereunder by the Sub-lessee, or in the event of the Sub-lessor obtaining possession of the Premises or of the Sub-lessee's goods and chattels on the Premises by reason of the default of the Sub-lessee or otherwise.

## **SECTION 21: REMOVAL AND REPAIR**

### **21.1 Removal and Repair**

In the event of the termination of this Sub-Lease in accordance with the provisions of this Sub-Lease, except for re-entry under SECTION 20 hereof, the Sub-lessee shall forthwith to the satisfaction of the Sub-lessor, remove from the Premises and from the Improvements, all aircraft, motor or other vehicles, equipment, SECTIONs, materials, effects or things at any time brought or placed thereon or therein by the Sub-lessee, except for such chattels of which removal may be specially provided elsewhere in this Sub-Lease; and the Sub-lessee shall also, to the satisfaction of the Sub-lessor, repair all and every damage and injury occasioned to the Airport and to the Premises by reason of such removal or in the performance thereof; but the Sub-lessee shall not, by reason of any action taken, or things performed or required under this clause, be entitled to any compensation whatever; provided that, unless required by the Sub-lessor, no goods, chattels, materials, effects or things owned or leased by the Sub-lessee or any Sub-lessee thereof shall be removed from the Premises or the Airport until all amounts due or to become due under this Sub-Lease is fully paid.

### **21.2 Surrender**

Except as otherwise expressly provided in this Sub-Lease, at the expiration or sooner termination of this Sub-Lease, the Sub-lessee will surrender and deliver up to the Sub-lessor vacant possession of the Premises and all Improvements and facilities located thereon in good condition and working order, free and clear of all encumbrances, liens and charges, and without compensation to the Sub-lessee. The Sub-lessee, at its own cost, will discharge and remove all mortgages, liens, encumbrances, charges, taxes, claims or adverse interests affecting the Premises, Improvements and facilities thereon, including the interests of all encumbrancers.

## **SECTION 22: LAND USE PLANNING**

### **22.1 Land Use Planning/Zoning**

- (a) The Sub-lessee acknowledges and accepts the circumstances that general municipal land use planning affecting the Airport resides with the Saint James Parish Council as a local authority having jurisdiction and the Sub-lessee shall not complain or object to such local authority and hereby attorns to the authority of the Saint James Parish Council or such local authorities, if any concerning respective jurisdictions over land use planning and hereby agrees to adhere to general municipal and land use planning and regulations. Without limiting the generality of the foregoing, the Sub-lessee agrees not to act inconsistently with any approved Airport master plan.
- (b) The Sub-lessee shall fully comply with and shall ensure that all parties using the Premises fully comply with any zoning regulations enacted pursuant to any Act of Jamaica.
- (c) The Sub-lessee shall observe and comply with applicable laws now or hereafter in force and do all things necessary to comply with, and to enable compliance by the Sub-lessee with this Sub-Lease.
- (d) The Sub-lessee shall deliver forthwith to the Sub-lessor a copy of any written notice of non-compliance received by the Sub-lessee with respect to any applicable law pertaining to this Sub-Lease.

## **22.2 Harmonized Development**

The Sub-lessee agrees that any development on the Premises will be in harmony with the overall planning of the Saint James Municipal Council or any applicable local authority, if any, having jurisdiction and not inconsistent with any approved Airport master plan.

## **SECTION 23: GENERAL PROVISIONS**

### **23.1 Relationship of Parties**

The provisions of this Sub-Lease shall not be deemed to create any relationship between the Sub-lessor and the Sub-lessee other than that of Sub-lessor and Sub-lessee as to the Premises. The Sub-lessor does not in any way or for any purpose become a partner of or a member of a joint enterprise with the Sub-lessee in regard to the Premises and its use and occupation by the Sub-lessee.

### **23.2 Partial Invalidity**

If a term, covenant or condition of this Sub-Lease or the application thereof to any person or circumstances is held to any extent invalid or unenforceable, the remainder of this Sub-Lease or the application of the term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected.

### **23.3 Number and Gender**

The necessary grammatical changes required to make the provisions of this Sub-Lease apply in the plural sense where the Sub-lessee comprises more than one entity and to corporations, associations, partnerships, or individuals, males or females, in all cases will be assumed as though in each case fully expressed.

### **23.4 Headings and Captions**

The table of contents, section numbers, section headings, section numbers and section headings are inserted for convenience of reference only and are not to be considered when interpreting this Sub-Lease.

### **23.5 Divisions of this Sub-Lease**

All reference in this Sub-Lease to schedules, sections and other subdivisions refer to those in this Sub-Lease unless otherwise indicated.

### **23.6 Obligations as Covenants**

Each obligation of the Sub-lessor or the Sub-lessee expressed in this Sub-Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

### **23.7 Governing Law**

This Sub-Lease will be interpreted under and is governed by the laws of Jamaica.

### **23.8 Confidentiality**

Each party hereto agrees that it shall hold in confidence and keep confidential the terms of this Sub-Lease and shall not use for their benefit or the benefit of others (except in connection with the business and affairs of such party in the course of carrying out the terms hereof including, without limitation, where disclosure is expressly permitted pursuant to this Sub-Lease) any information in this Sub-Lease or derived by this Sub-Lease with respect to the business and affairs of the other party (hereinafter "Confidential Information"). Prior to and at all times after the execution of this Sub-Lease, neither party shall use, copy, transfer or destroy any Confidential Information other than as necessary in the course of carrying out the terms of this Sub-Lease, without the other party's prior written consent, and each party shall take all reasonable precautions to prevent inadvertent use, copying, transfer or destruction of any Confidential Information.

The foregoing prohibitions shall not apply to any Confidential Information if:



- (a) the Confidential Information is available to the public or in the public domain at the time of such disclosure or use, without breach of this Sub-Lease;
- (b) disclosure is required to be made by any law, regulation, governmental body or authority or by court order; or
- (c) disclosure is made to a court which is determining the rights of the parties under this Sub-Lease,

provided that before disclosure is made under clauses (b) or (c) above by any party, notice of the requirement is provided to the other party, and to the extent possible in the circumstances the other party is afforded an opportunity to dispute the requirement.

The parties acknowledge and agree that their respective obligations under this Section 23.8 are to remain in effect in perpetuity. The burden of proving that any information or material is not Confidential Information shall be on the party asserting such exclusion.

### **23.9 Joint and Several Liability**

If two or more individuals, corporations, partnerships or other business associations are the Sub-lessee, the liability of each individual, corporation, partnership or other business association to perform all obligations hereunder is joint and several.

### **23.10 Registration**

- (a) Neither the Sub-lessee, nor anyone on the Sub-lessee's behalf or claiming under the Sub-lessee, shall register this Sub-Lease against the Airport lands or any part thereof (including the Premises) without the prior written consent of the Sub-lessor, which consent may be unreasonably withheld. The Sub-lessor acknowledges that the Sub-lessee shall, however, at the Sub-lessee's expense, be entitled to register a notice of lease (in such form so as to satisfy minimum statutory requirements only) against that portion of the Airport lands comprising the Premises.
- (b) The notice of lease referred to in paragraph (a) above shall be prepared by the Sub-lessee's legal counsel, at the Sub-lessee's sole expense and submitted to the Sub-lessor for the Sub-lessor's prior written approval, which approval shall not be unreasonably withheld. Forthwith following registration of any notice of lease, the Sub-lessee agrees to provide the Sub-lessor with a copy of such registered instrument.

The Sub-lessee covenants that upon the expiration or sooner termination of this Sub-Lease, it shall, at the Sub-lessee's expense, immediately thereafter, cause any and all registrations effected under this section 23.10 to be discharged and to provide copies of all such registered discharges to the Sub-lessor. It is agreed by the Sub-lessee that the foregoing covenant shall survive the expiration or sooner termination of this Sub-Lease.

### **23.11 Payment**

Any monies to be paid to the Sub-lessor under the Lease shall be made payable to the Sub-lessor and shall be forwarded to the Sub-lessor at the address shown in subsection 1(a)(ii), or such other address as the Sub-lessor may, from time to time, specify in writing.

### **23.12 Time to be of Essence**

Time shall be of the essence in this Sub-Lease, except as otherwise expressly specified in this Sub-Lease.

### **23.13 Notices**

23.13.1 A notice, demand, request, statement or other evidence required or permitted to be given under this Sub-Lease must be written and will be sufficiently given if delivered in person to either party, sent by email to [mbj-commercial@mbjairport.com](mailto:mbj-commercial@mbjairport.com) and copied to [MBJ-CEO@mbjairport.com](mailto:MBJ-CEO@mbjairport.com) or within fourteen (14) days if mailed by registered mail from any post office in the island of Jamaica addressed as follows:

To the Sub-lessor - at the address set out in subsection 1.1(a)(ii) above; and

To the Sub-lessee - at the address set out in subsection 1.1(b)(ii) above.

23.13.2 Such addresses may be changed from time to time by giving notice as above provided.

23.13.3 If any question arises as to whether any notice was or was not communicated by one party to the other, it shall be deemed to have been effectively communicated or given on the day received by personal delivery, on the next-following business day if sent by facsimile, or on the fifth (5th) day after it was mailed.

23.13.4 In the event of any existing or threatened disruption in postal service, service by mail shall not be an acceptable means of delivery until five (5) days after normal postal service has resumed.

#### **23.14 Amendment to be in Writing**

No alteration, amendment, change or addition to this Sub-Lease shall bind the Sub-lessor or the Sub-lessee unless in writing and signed by them and signatures witnessed.

#### **23.15 No Transfer on Bankruptcy**

Neither this Sub-Lease, nor any interest of the Sub-lessee herein, nor any estate hereby created, shall pass or enure to the benefit of any trustee in bankruptcy or any receiver, or any receiver-manager or any assignee for the benefit of creditors of the Sub-lessee or otherwise by operation of law.

#### **23.16 Successors and Assigns**

This Sub-Lease binds and benefits the parties and their respective administrators, successors and assigns. No rights, however, benefit an assignee of the Sub-lessee unless under SECTION 13 the assignment was consented to.

#### **23.17 Entire Agreement**

This Sub-Lease, including the attached schedules, shall be deemed to constitute the entire agreement between the Sub-lessor and the Sub-lessee hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations, and documents in relation thereto made by any party to this Sub-Lease.

#### **23.18 Survival**

Termination or expiration of this Sub-Lease shall not affect the rights of the parties that accrued prior to termination or expiration. Notwithstanding anything to the contrary contained in this Sub-Lease, the provisions of SECTION 4, SECTION 9 and of SECTION 16, as well as, all other provisions of this Sub-Lease that by their terms survive or are capable of surviving this Sub-Lease, shall survive any termination or expiration of this Agreement. The provisions of this Section 23.18 shall not be in limitation of, and the parties shall retain, any other right or remedy under this Agreement or at law or in equity.

#### **23.19 Exclusion of Implied Rights**

(a) The operation of the Rent Restriction Act 1944 (by reason of the Exemption Order under the said legislation) and any implied rights or covenants for the benefit of the Sub-lessee under any other legislation or by operation of law, including (if applicable) under the Registration of Titles Act, shall be excluded from this Sub-Lease and the only rights granted to the Sub-lessee or covenants given by the Sub-lessor are those expressly set out in this Sub-Lease and the Sub-lessee shall not by virtue of this Sub-Lease be deemed to have acquired or be entitled by any means whatsoever to any right or easement from or over or affecting any other land or premises now or at any time hereafter belonging to the Sub-lessor and not comprised in this Sub-Lease.

(a) The implied covenants of a lessee under Section 95 of the Registration of Titles Act and the powers of the landlord under Section 96 of the Registration of Titles Act shall be excluded from this Sub-Lease but without prejudice to the rights and powers of the Sub-lessor provided under this Sub-Lease and without prejudice to the covenants of the Sub-lessor contained in this Lease.

**IN WITNESS WHEREOF** the parties hereto have executed this Sub-Lease by the signatures of their respective proper officers duly authorized for such purpose.

Sub-lessor: **MBJ AIRPORTS LIMITED**

PER: \_\_\_\_\_  
Name:  
Title: Chief Executive Officer

PER: \_\_\_\_\_  
Name:  
Title:

"I/we have authority to bind the Corporation."

Sub-lessee:

PER: \_\_\_\_\_  
Name:  
Title:

"I have authority to bind the Corporation."

**SCHEDULE "A"**

**DIAGRAM OF AIRPORT LANDS**

## SCHEDULE "B"

### DEFINITIONS

In this Sub-Lease, the words, phrases and expressions are used with the meanings defined as follows:

**"Additional Rent"** means all sums payable by the Sub-lessee under this Sub-Lease other than Annual Base Rent or Revised Annual Base Rent, as the case may be;

**"Air Navigation Facilities"** mean any navigation, weather, communication equipment, surveillance equipment, electronic landing aid and other equipment required for air navigation services, and all antennae and all associated cable ducting and telecommunications systems, cables or circuits, including co-axial cables, which are necessary to ensure the safe and efficient movement of aircraft, but excluding Visual Aids;

**"Air Terminal Building"** shall mean facilities, buildings and structures at the Airport utilized to facilitate passenger traffic at the Airport, both enplaned and deplaned, and related services, including baggage handling, customs and security clearance;

**"Airport" or "Airport Lands"** mean the Sangster International Airport, being comprised of the lands described in Schedule "A" attached hereto;

**"Airport Master Plan"** means the document setting out the Airport's growth and development plan through to 2035;

**"Airport Rules and Regulations"** mean all rules and regulations established from time to time by the Sub-lessor regulating activities from and at the Airport which may be amended from time to time shown at Appendix I;

**"Annual Base Rent"** means the annual base rent calculated and payable by the Sub-lessee to the Sub-lessor in accordance with Schedule "F" of this Sub-Lease;

**"Architects"** mean an architect who is qualified and licensed to practice architecture in Jamaica as the Sub-lessee may appoint from time to time hereunder;

**"Basic Terms"** mean those terms set out in section 1.1, some of which are more particularly defined in this Schedule "B";

**"AAJ"** means the Airports Authority of Jamaica, as constituted under the Airports Authority Act of Jamaica, its successors and assigns.

**"Civil Aviation Act"** shall mean the Civil Aviation Act of Jamaica, as amended from time to time, or any related or successor legislation of the Parliament of Jamaica regulating aviation, airports and aerodromes, together with the Civil Aviation Regulations and all other rules, regulations, directives and orders as may be promulgated from time to time thereunder;

**"Commencement Date"** means the date set out in subsection 1.1(e)(ii);

**"Completion Date"** has the meaning the meaning ascribed thereto in Section 1.1(b) of Schedule "E" attached hereto;

**"Concession Fee"** has the meaning ascribed thereto in Section 4.4 of this Sub-Lease;

**"Construction Period"** means the period, estimated by the Sub-lessee, acting reasonably, commencing upon the Commencement Date and extending to the earlier of (i) the date upon which the Sub-lessee occupies the Premises for the purposes of carrying on business; and (ii) the close of business on the Completion Date (as defined in Section 1.1(c) of Schedule "E"), subject to Force Majeure;

**"Construction Program"** means the Sub-lessee's construction plans, including the projected schedule for the completion of the Sub-lessee's Improvements, copies of which shall be provided to the Sub-lessor;

**"Consultant"** means such person qualified and experienced in the management of construction projects as the Sub-lessee may appoint;

**"Drawings and Specifications"** mean the drawings and specifications of the Improvements which have been prepared by or at the request of the Architects and/or the Consultant in compliance with the provisions of this Sub-Lease, and without limitation, in compliance with the all local zoning requirements and with all air traffic services line of sight requirements and the navigational aids restrictions stipulated by all regulatory authorities, if any, and with the building location and setback requirements stipulated by all regulatory authorities, if any, with respect to adjacent buildings, lot lines, runways, taxiways, apron areas and Airport roadways. Such drawings and specifications shall be deemed annexed hereto as part of Schedule "D", without necessity of formal amendment to this Sub-Lease and shall consist of:

- (A) Specific and detailed site plans subject to such alterations or amendments as may be approved by the Sub-lessor and/or all regulatory authorities, if any, which shall display:
  - (1) The location, dimensions and setbacks of all Improvements, including the System, all Municipal Services and Utilities situated on the Premises, all related works, structures, aprons, paved areas, taxiways, lighting facilities, signs, vehicle parking, landscaped areas, walkways, security fences, airport roadway connections, facilities and other improvements to be constructed or located on the Premises;
  - (2) Planned elevation and cross-section views for the Improvements to be erected displaying:
    - (i) the height, massing and conceptual design of the proposed Improvements, including the System, Municipal Services and Utilities situated on the Premises and all related works, structures, aprons, if any, paved areas, lighting facilities, signs, vehicle parking, landscaped areas, airport roadway connections, walkways, security fences, facilities and other improvements;
    - (ii) the relationship of the proposed Improvements, including the System, Municipal Services and Utilities situated on the Premises and all related works, structures, aprons, paved areas, taxiways, lighting facilities, signs, vehicle parking, landscaped areas, airport roadway connections, walkways, security fences, facilities and other improvements to adjacent buildings and exterior areas at the Airport;
    - (iii) the colour, texture, reflectivity and type of materials, window detail, construction details, architectural details and interior design;
    - (iv) landscaping, signs and parking facilities; and
    - (v) lot grading and grade elevation.
- (B) Working Drawings and Specifications with respect to the Improvements, including the System, and all related works, structures, aprons, paved areas, lighting facilities, signs and infra-structure, walkways, security fences, airport roadway connections, facilities and other improvements to be constructed or located on the Premises which shall be comprised of:
  - (i) construction plans, drawings and specifications;
  - (ii) architectural plans, drawings and specifications;
  - (iii) mechanical plans, drawings and specifications;
  - (iv) electrical plans, drawings and specifications;
  - (v) structural plans, drawings and specifications; and
  - (vi) complete "As Built" plans, drawings and specifications in such format as the Sub-lessor may request (i.e. electronic - CAD format).
- (C) Extension Plans for Municipal Services and Utilities which shall comprise:

- (i) Municipal Services site plans displaying the proposed service extension route for water, sanitary sewer and storm water management facilities and surface drainage systems from the existing main systems at the Airport and to the Premises, including all service connection locations;
- (ii) Utilities site plans displaying the proposed extension routes for hydro, gas and telephone cable services and other similar services from existing main utility systems at the Airport and to the Premises, including the location of all connection points, meters and transformers; and
- (iii) engineering plans, and working drawings and specifications for the Utilities and Municipal Services extensions and systems.

**"Environmental Adverse Effect"** means an environmental effect arising as a result of a breach of any Environmental Laws and Regulations;

**"Environmental Contaminant"** means any hazardous or toxic substance or material, including without limitation, products of waste, contaminants, pollutants, dangerous substances, noxious substances, toxic substances, hazardous wastes and flammable, explosive or improperly handled materials, fluids, vapours or other such substances utilized and applied to the wings, fuselage, tail or any other part of aircraft exterior surfaces as required pursuant to Natural Resources Conservation Act, subsidiary regulations or any other such regulations, orders and directives as may be prescribed from time to time;

**"Environmental Laws and Regulations"** mean all applicable environmental, health and safety laws, regulations, ordinances, directions, authorizations, permits and orders of any applicable governmental authority (whether federal, provincial or local) applicable to the Premises and/or to the Airport generally, together with common law applicable thereto;

**"Environmental Management Program"** means the program designed by the Sub-lessor to manage all environmental issues concerning the Airport, a copy of which is located at Appendix IV;

**"Environmental Matter"** means any activity, event or circumstances in respect of the environment, health or safety, including the release, escape, leaking, disposal or migration of any Environmental Contaminants;

**"Force Majeure"** means an event causing a bona fide delay, notwithstanding the reasonable best efforts of the party delayed with respect thereto, in the performance of any obligation under this Sub-Lease arising from strike, lockout, riot, insurrection, war, fire, tempest, Act of God or lack of material; provided that, in the case of the Sub-lessee, the Sub-lessee notifies the Sub-lessor forthwith after the Sub-lessee becomes aware of the commencement of any event which is a cause of a "Force Majeure". Notwithstanding the foregoing, the parties agree that an event of Force Majeure does not include an event caused by one party's inability to pay moneys owing by such party when due;

**"Fuel Products"** mean automotive gasoline, diesel, propane, used for the fuelling of motor vehicles, airline equipment and the fuelling equipment in support of the System but does not include Aviation Fuel;

**"Gross Revenue"** mean the Sub-lessor's gross revenues from all sales made and services performed for cash or credit at the Premises, including but not limited to all deliveries originating from the Premises. Gross Revenue does not include: (1) sales taxes separately stated and collected from customers of the Sub-lessor; (2) customer credit card and cash refunds given for merchandise returned by customers; (3) receipts from the sales or trade-in value of any furniture, fixture, or equipment used on the Premises and owned by the Sub-lessor; and (4) receipts from the sale of any item to another operation or affiliate of the Sub-lessor, whether or not located on the Airport, where such sale is incidental and not made for the purpose of circumventing the fee provisions of this Agreement (5) Any discounts, reductions and or deductions have been applied by the Sub-lessor.

**"Head Lease"** means the original lease agreements, Property Lease No.1 and No.2 between the Sub-lessor and the AAJ executed as of April 12, 2003 as such agreements may be further amended from time to time, setting forth the terms and conditions pursuant to which Sub-lessor leases the Airport from the AAJ;

**"Jamaica Civil Aviation Authority"** means the entity providing air navigation services at the Airport, its successors and assigns, whether **Jamaica Civil Aviation Authority** or some other entity;

**"Improvements"** mean the System, the Municipal Services and Utilities and other improvements situated or to be situated on the Premises, together with all other buildings, works and structures, paved areas, vehicle parking areas, lighting facilities, signs, airport roadway connections, facilities and other improvements, if any, to be constructed and located on the Premises as may be shown in Schedule "D" hereto and/or as may be more particularly described in the Drawings and Specifications;

**"Land Development Policies"** mean the standard policies for the issuing of approvals and other matters related to land development and construction created or adopted either before or after the Commencement Date as a by-law or policies of the Sub-lessor or designated as such by the Sub-lessor, all as amended from time to time, together with all rules and regulations referred to therein;

**"Lease Year"** means a one-year period beginning on April 1, 2020 and ending at 00.00 hours on March 31 each year of the Term.

**"Manager of Commercial Business Development & Marketing "** means the individual designated from time to time by the Sub-lessor as the person responsible for managing the day to day commercial operations of the Airport, whether referred to as the Manager of Commercial Business Development & Marketing or by some other title;

**"Municipal Services"** mean water, sanitary sewers and storm water management facilities or surface drainage systems including connections, drains, laterals, pumping facilities and related facilities;

**"Natural Environment"** means the air, land, subsoil, surface water, ground water, marine water and any combination thereof;

**"Premises"**, as at the Commencement Date, shall have the meaning set forth in subsection 1.1(c) of SECTION 1 of this Sub-Lease, and thereafter, "Premises" shall mean the Premises as same may be reconfigured and/or reconstituted from time to time in accordance with the provisions of this Sub-Lease;

**"Property Taxes"** mean, with respect to the Premises, all taxes, rates, duties and assessments (including frontage, water, snow and sewer taxes and rates) imposts, charges or levies, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every nature or kind whatsoever and whether in existence on the Commencement Date or not, that are lawfully levied, imposed, rated, charged or assessed against the Premises, or any part thereof, from time to time by any taxing authority, whether federal, provincial, municipal, school or otherwise, and includes any taxes or other amounts which are imposed instead of, or in addition to, such Property Taxes (whether of the forgoing character or not and whether in existence on the Commencement Date or not), and any such Property Taxes imposed against the Sub-lessor on account of its interest in the Premises, or any part thereof, and Property Taxes which are imposed against the Sub-lessee as a holder or occupier of the whole or any party of the Premises; provided, however, Property Taxes does not include any taxes which are personal to the Sub-lessor such as the Sub-lessor's income, payroll and capital taxes;

**"RAP"** means Restricted Area Pass which is the form of security identification issued by the Sub-lessor for accessing various areas of the Airport.

**"Rent Adjustment Date"** means April 1 each year of the Sub-Lease after the expiration of the first year of the Term. Upon the Rent Adjustment Date, the applicable Revised Annual Base Rent shall become effective;

**"Restricted Area of the Airport"** means an area to which access by persons or vehicles requires the presentation of valid RAP;

**"Revised Annual Base Rent"** means the annual base rent payable during each Subsequent Period established pursuant to Schedule "F" hereof;

**"Subsequent Period"** means each Lease Year after the first Lease Year of the Term.



**"Substantial Completion" or "Substantially Completed"** means substantial completion of the construction of the Improvements as defined in subsection 1.2(a) of Schedule "E";

**"Supply Corridor"** has the meaning ascribed thereto in Section 4.1(d) of the Schedule "G";

**"System"** means the fuel receiving, storage, maintenance and distribution facility constructed or to be constructed by the Sub-lessee on the Premises and related facilities above or below the Premises having the shape, design, configuration, features, facilities and dimensions as more particularly described in the Drawings and Specifications, as same may be amended from time to time pursuant to the provisions of this Sub-Lease;

**"Sub-Lease"** means this sublease of the Premises, including any all schedules and exhibits attached hereto, as same may be amended from time to time;

**"Sub-lessee"** means the party described in subsection 1.1(b) and its successors and permitted assigns;

**"Term"** means the Term, as such period of time may be extended or renewed (if this Sub-Lease is renewed pursuant to subsection 3.5);

**"Utilities"** mean electricity, telephone, internet, cable service or such other service utilities as may be necessary for the use and operation of the Improvements on the Premises; and

**"Visual Aids"** mean approach lights, runway lights and signs and any other similar physical instruments for the safe and efficient operation and control of aircraft.

**SCHEDULE C**

**PLAN OF THE PREMISES**

**- SEE ATTACHED -**

**SCHEDULE "D"**

**DRAWINGS AND SPECIFICATIONS**

To be delivered by the Sub-lessee to the Sub-lessor for approval after execution of this Sub-Lease. All such approved drawings shall be attached to this Schedule "D".

## **SCHEDULE "E"**

### **MBJ LAND DEVELOPMENT POLICY**

#### **1.1 General**

The Sub-lessee shall cause all Improvements to be constructed and completed expeditiously and in a good, skillful and competent manner consistent with the standards of a First Class Facility (as defined by subsection 12.1(a) of the Lease) at an international airport and in accordance with all requirements of the Drawings and Specifications, and the provisions of the Lease, and in particular:

- (a) shall make a completed application for construction approval to MBJ no later than ninety (90) days following execution of this Sub-Lease and satisfaction or waiver of all conditions in favour of the Sub-lessee, if any, set out in Section 2.1, and shall cause construction of the Improvements to commence not later than sixty (60) days following the issuance of an approval by the Sub-lessor to the Sub-lessee;
- (b) subject to Force Majeure, shall cause the Improvements to be Substantially Completed, in accordance with section 1.2 below, within twelve (12) months of the Commencement Date, subject to extensions of time granted pursuant to section 1.3 below;
- (c) subject to Force Majeure, shall cause the Improvements to be fully completed in accordance with all the provisions of this Sub-Lease with reasonable promptitude not later than December 31, 2012 (the "Completion Date"), subject to extensions of time granted pursuant to section 1.3 below;
- (d) shall cause the Drawings and Specifications to be prepared and completed by the Architect or the Consultant for the approval of the Sub-lessor and all regulating authorities, if any, with respect to the construction of the Improvements; and
- (e) shall retain the Architects and the Consultant throughout the Construction Period.

#### **1.2 Substantial Completion of Improvements and Completion Date**

- (a) For the purposes hereof, the Improvements shall be deemed to have been Substantially Completed upon the occurrence of any of the following:
  - (i) the Architects or Consultant certifies to the Sub-lessor and to the Sub-lessee that the Improvements have been completed in all material respects in a good, skillful and competent manner in accordance with all provisions of the Lease and the Drawings and Specifications except for any requirements contained in the Drawings and Specifications which have been waived or varied by the Sub-lessor and/or all regulatory authorities, if any, in writing, and for faults and defects which, in the opinion of the Architects or Consultant, are minor and the correction of which is not required in the opinion of the Architects or Consultant; or
  - (ii) upon issuance by the local authority (or other appropriate authority) of an occupancy permit (or other like authorization) with respect to the use and occupation of the Improvements by the Sub-lessee.
- (b) For the purposes hereof, the Completion Date is the date upon which all of the following conditions have been fulfilled:
  - (i) the Improvements have been Substantially Completed pursuant to subsection 1.2(a);
  - (ii) the Premises shall be completely landscaped in accordance with the Drawings and Specifications;
  - (iii) there are no liens or other claims outstanding in respect of the construction of the Improvements except for claims for completion payments by contractors not exceeding any amounts which the Sub-lessee is required to retain under the provisions of any applicable contract or is required or permitted to retain under the provisions of the Lease; and except for amounts required or permitted to be so

retained, all accounts for work and materials which could give rise to any claim against the Premises or the Improvements have been paid, and

- (v) all interior finishing, partitioning, flooring and painting shall be completed.
- (c) For the purpose of establishing the Completion Date, the Sub-lessor (but not the Sub-lessee) has the right to waive any of the conditions set out in this section 1.2, in whole or in part, but no waiver of the conditional nature of any of the foregoing provisions relieves the Sub-lessee of its obligation to perform its covenants hereunder.

### 1.3 Extensions of Time for Construction of Improvements

If the Sub-lessee has been delayed in constructing the Improvements by reason of an event of Force Majeure, then the Sub-lessee may at any time before the dates specified in section 1.1 (b) and/or (c) notify the Sub-lessor that it requires an extension of the time for compliance with the requirements of said sections 1.1 (b) and/or (c) in which event, provided the Sub-lessee has demonstrated a bona fide Force Majeure event in accordance with the provisions of this Sub-Lease, the time for compliance with the requirements of said section 1.1(b) and/or (c) shall be extended for a period or periods equal to the length of time estimated by the Sub-lessee, acting reasonably, required to Substantially Complete and/or to fully complete the Improvements, as the case may be, with reasonable diligence.

### 1.4 Contracts for Construction of Improvements

- (a) The Sub-lessee shall retain the services of the Consultant, who shall provide site management, consultation, project planning and scheduling services, administrative, technical and supervisory services and such other services as are usually provided by consultants and project managers in relation to projects of a similar nature. The Sub-lessee shall, upon the Sub-lessor's written request and upon the Sub-lessor signing a confidentiality agreement in respect of same, if so required by any relevant third party in this circumstance, which agreement shall be expressly subject to any obligations of disclosure imposed upon the Sub-lessor pursuant to the Head Lease or otherwise at law, provide to the Sub-lessor copies of the construction contracts, including labour agreements, which the Sub-lessee enters into for the construction of the Improvements, together with copies of any indemnity, insurance certificates, guarantees, performance bonds and other security given by the contractor(s).
- (b) The Sub-lessee shall submit for approval by the Sub-lessor and all applicable regulatory authorities, if any, the Drawings and Specifications for each phase of construction of the Improvements. All working drawings and specifications supplied to contractors shall be consistent with the Drawings and Specifications.
- (c) The Sub-lessee shall ensure that all construction contracts entered into with respect to the implementation and construction of the Improvements shall contain a term requiring the contractor(s) to indemnify and save harmless the Sub-lessor and its respective officers, employees and agents from and against all claims, demands, losses, damages and costs of any kind based upon any injury or loss of property arising from any wilful or negligent act, omission or delay on the part of each contractor, its directors, officers, employees or agents in carrying out the contract.

### 1.5 Commencement of Construction of Improvements

Before commencing excavation or any work on the Premises for the construction of the Improvements, the Sub-lessee shall have:

- (a) submitted to the Sub-lessor and all regulatory authorities, if any, the parts of the Drawings and Specifications that relate to the portion of the work which the Sub-lessee proposes to commence;
- (b) furnished satisfactory certificates of insurance for the insurances required by sections 1.7, 1.8 and 1.9 below;
- (c) arranged or obtained from the contractor(s) the indemnities, insurance, guarantees, performance bonds and other security required by the contract(s); and

- (d) obtained all building permits and other authorizations from the AAJ and all other regulatory authorities, if any.

#### 1.6 Duties of Sub-lessee in Construction

The Sub-lessee shall perform and comply with the following covenants and requirements in the construction of the Improvements:

- (a) the Improvements shall be constructed in all respects in accordance with the provisions of the Lease, including the Drawings and Specifications, except in so far as any requirements have been waived or varied by the Sub-lessor and/or regulatory authorities, if any, in writing;
- (b) the construction work shall be conducted expeditiously in a good, skillful and competent manner and otherwise in accordance with the provisions of the Lease;
- (c) the work site for the construction of the Improvements shall at all times during construction be enclosed by a secure fence, so as to prevent unauthorized entry to the work site or to any Restricted Area of the Airport;
- (d) the Sub-lessee, through the Consultant and/or Architects, shall properly supervise the work;
- (e) any contractor(s) engaged on the work shall be required to observe all provisions of its contract and to furnish and maintain all security, indemnities, insurance, guarantees, performance bonds and other security required by the contract(s);
- (f) the Sub-lessor shall at all reasonable times on reasonable prior written notice and always in the company of a Sub-lessee's representative have access to the Premises for inspection purposes and to put the Sub-lessee, the Architects or the Consultant on notice, in writing, of any default or non-compliance with the Drawings and Specifications, or the Lease, and the Sub-lessee shall forthwith deal with and remedy any default or non-compliance;
- (g) The Sub-lessor may, provided it has executed a confidentiality agreement in respect thereof if so required by any relevant third party in this circumstance, which agreement shall be expressly subject to any obligations of disclosure imposed upon the Sub-lessor pursuant to the Head Lease or otherwise at law, require the Sub-lessee at its own expense to submit at reasonable intervals, certificates of the Architects or Consultant of the standing of the work, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained by the Sub-lessee on any contract, and the Sub-lessee shall also, whenever requested by the Sub-lessor, furnish copies of certificates furnished to it by contractors or by the Architects and/or the Consultant in connection with the construction;
- (h) the Sub-lessee shall when due pay all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of the Improvements, but this shall not prevent the Sub-lessee from retaining any amounts claimed due which the Architects has not certified to be due, or which are properly and reasonably retained to secure the performance of any work or the correction of any defect or which in the opinion of the Architects are reasonably retained in anticipation of damages arising from any contractor's default, or which are required to be retained under provision of law;
- (i) the Improvements shall be Substantially Completed to the extent required by subsection 1.2(a) on or before the expiration of the date stipulated in subsection 1.1(b), or as the date may be extended pursuant to section 1.3;
- (j) the Sub-lessee shall complete all work consisting of finishing the interior of space and all other work necessary for the Completion of the Improvements and cause subsection 1.2(b) to be complied with on the Completion Date or as the date may be extended pursuant to section 1.3;
- (k) the Sub-lessee shall construct the Improvements in a manner which shall provide for minimal disruption to Airport operations and activities, and all construction access roads on the Airport to the Premises shall be approved in writing by the Chief Technical Officer of the Sub-

lessor and shall be utilized by the Sub-lessee and its contractors in compliance with the Airport Rules and Regulations. Furthermore, all cranes utilized for construction purposes shall comply with Jamaica Civil Aviation Authority requirements, if any, the Sub-Lessor's Rules and Regulations and shall be erected only with the permission of the Chief Technical Officer of the Sub-Lessor;

- (l) the Sub-lessee, if applicable, shall obtain building permits and other related authorizations from the Saint James Parish Council or other appropriate authorities with regard to the construction Improvements by the Sub-lessee to the Premises or any enlargement or expansion thereof under this Sub-Lease;
- (m) the Sub-lessee shall construct the Improvements, or any enlargement or other alteration thereof in conformity with the following standards, to the extent applicable the standards contained in the zoning and building by-laws and regulations of the local authority having jurisdiction in effect at the time of such construction, enlargement or other alteration.
- (n) The Sub-lessee shall, to the extent applicable, pay or cause to be paid any or all local improvement charges, development charges, building permit fees and all other fees and charges and all other fees and charges as may be required for the purposes of constructing the Improvements all in accordance with the by-laws, policies of general application and requirements of the Saint James Parish Council and any other relevant authority having jurisdiction;
- (o) The Sub-lessee shall ensure that all legal or control survey monuments (if any) are protected and not disturbed, damaged, or destroyed during construction or maintenance which may take place on the Premises; and
- (p) The Sub-lessee shall control all refuse, debris and construction materials on the Premises so as to ensure the Premises are maintained in an orderly, safe and efficient state during construction of the Improvements and shall take all measures to prevent foreign object debris (FOD) or damage with respect to the Airport.

#### 1.7 **Liability and Property Insurance during Construction**

- (a) The Sub-lessee shall effect or shall cause its contractor or contractors to effect prior to the commencement of construction of the Improvements, and maintain and keep in force until the insurance required under SECTION 15 of the Lease has been effected, the following insurance coverage:

- (i) **Wrap-Up Liability Insurance Coverage**

protecting the parties, the Architects and the Consultant, the engineers and all other professionals, all contractors retained by the Sub-lessee and all subcontractors retained by such contractors in connection with the construction of the Improvements (without any rights of cross claim or subrogation against the Sub-lessor) against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Premises or anywhere on the Airport directly connected with the construction of the Improvements, and to an amount of not less than Five Million Dollars (\$5,000,000.00) per claim or occurrence; and

- (ii) **Broad Form Builders' Risk Coverage**

protecting the parties, the Architects and/or Consultant, all contractors retained by the Sub-lessee and all subcontractors retained by such contractors in connection with the construction of the Improvements from loss or damage (without any rights of cross claim or subrogation against the Sub-lessor) to the Improvements and all fixtures, equipment, improvements and building materials on the Premises from time to time, during the Construction Period (but which may be by policies effected from time to time covering the risk during different phases of construction) against all risks applicable to similar properties during construction and effected in Jamaica by prudent builders, and other perils as the Sub-lessor may reasonably require to be insured against to the full replacement value thereof at all times (to be computed

upon a replacement cost basis with deduction only of the cost of excavation and foundations and of the value of building materials from time to time on the site but not incorporated in the Improvements if and to the extent the building materials are at the risk of the contractor or contractors and not at the risk of the Sub-lessee) and in any event in an amount sufficient to cover the value of the project.

- (b) For the purposes of subsection 1.7(a)(i), "insurance coverage" includes, but is not limited to the following: non-owned automobile liability for any non-owned vehicles to be used in connection with the operation of the business, blanket contractual liability, lessees' legal liability, owners' and contractors' protective liability for any contingent liability which may develop as a result of any accident caused by the negligence of a contractor, completed operations liability for any injury or damage arising out of improperly performed operations or out of warranty which may occur after operations are completed.
- (c) Despite subsection 1.7(a)(i), insurance coverage for completed operations liability shall be maintained and kept in force continuously until twenty-four (24) months following the Completion Date.
- (d) The proceeds of insurance which may become payable under any policy of insurance effected pursuant to subsection 1.7(a)(ii) shall be payable to the Sub-lessee and all additional interests, and shall be available to finance repair and reconstruction.
- (e) All the provisions of SECTION 15 of the Lease respecting insurance which are of general application apply to the insurance during construction of the Improvements required by this paragraph.
- (f) The policies of insurance referred to in this Section 1.7 shall require the insurer(s) thereunder to provide thirty (30) days' prior written notice of any cancellation, termination, expiry or material change to the coverage to the Sub-lessor. The address for notice to the Sub-lessor shall be that of the address for notices to the Sub-lessor as provided for in this Sub-Lease.

#### **1.8 Professional Liability for Sub-lessee's Architects, Engineers and Other Professionals**

The Sub-lessee shall ensure that the Architects, the Consultant and any engineer or other consultant retained by the Sub-lessee in relation to the construction of the Improvements shall purchase and maintain in force, at its own expense, including the payment of all deductibles, professional liability insurance, which coverage shall be in a form acceptable to the Sub-lessor and be specific to the project and the construction of the Improvements only, each in the amount of not less than One Million Dollars (\$1,000,000.00), per claim or occurrence with a certificate of such coverages originally signed by an authorized agent of the insurance company issuing the coverages being delivered by the Sub-lessee to the Sub-lessor prior to the commencement of any services by the Architects or the Consultant in relation to the construction of the Improvements.

The Professional Liability insurance referred to above shall provide thirty (30) days' prior written notice of any cancellation, termination, expiry or material change to the coverage to the Sub-lessor. The address for notice to the Sub-lessor shall be that of the address for notices to the Sub-lessor as provided for in this Sub-Lease.

#### **1.9 Automobile Insurance**

The Sub-lessee shall effect or shall cause its contractor or contractors and the Architects and/or Consultant or any consultant retained by the Sub-lessee in relation to the construction of the Improvements to effect prior to the commencement of construction of the Improvements, and maintain and keep in force until the Completion Date, for all vehicles used or operated by any of them in connection with the construction of the Improvements, comprehensive liability insurance coverage.

#### **1.10 Actions on Part of Sub-lessee**

The Sub-lessee agrees not to knowingly do anything, omit to do anything or permit anything to be done or omitted to be done which would invalidate, adversely affect or limit any insurance coverage maintained by the Sub-lessor with respect to the Airport.



1.11      **Liens**

- (a)      The Sub-lessee acknowledges that the Sub-lessor should they be held to be accountable as "owner" with respect to the construction of any of the Improvements. Without limiting the generality of the foregoing, the Sub-lessee acknowledges and agrees that any Improvements and all alterations or repairs made to the Premises are at the request of the Sub-lessee and shall not be deemed to have been made at the request of the Sub-lessor.
- (b)      The Sub-lessee covenants to indemnify and save harmless the Sub-lessor and each person for whom the Sub-lessor may, in law, have responsibility, of and from any claims and costs incurred by them or by such person as a result of construction on the Premises or the leasehold interest therein by or on behalf of any worker, contractor or subcontractor of the Sub-lessee or of anyone holding any interest in the Premises or any part thereof through or under the Sub-lessee.
- (c)      The provisions of paragraphs (a) and (b) above are in addition to and must be read in conjunction with the provisions respecting liens set out in section 16.3 of the Lease.

**SCHEDULE "F"**

**ANNUAL BASE RENT**

**SECTION 1.00 - First Lease Year Period**

**1.01      Annual Base Rent:**

During the first year of the Term, the Annual Base Rent shall be based upon a land lease rate of United States .....per square foot per annum, being equal to \$..... for the first year (or \$..... per month). Annual Base Rent calculated as aforesaid is payable annually in accordance with subsection 4.2 of this Sub-Lease and is subject to adjustment as provided in subsections 1.02 and 1.04 below.

**1.02      Rate per Square Foot:**

The Annual Base Rent amount referred to in subsection 1.01 above is based upon the land lease rates referred to therein applied to an estimated ground area taken to measure ..... square feet. The Sub-lessor and Sub-lessee acknowledge and agree that ..... square feet represents an estimate of the ground area comprising the Premises, which estimate shall be verified by way of a reference plan of survey of the Premises to be prepared in accordance with subsection 1.03(a) below.

**1.03      Surveys:**

- (a) The Sub-lessee agrees, at its sole cost and expense, to cause a reference plan of survey of the Premises tied into the existing Airport survey control monuments to be prepared by a commissioned Land Surveyor of Jamaica and registered in the appropriate Land Titles Office. Notwithstanding the foregoing, such reference plan of survey shall not be registered until a draft plan has been submitted to the Sub-lessor for the Sub-lessor's prior review and approval. Following the registration thereof, the Sub-lessee agrees to provide not fewer than five (5) original copies of the registered reference plan of survey referred to in Section 1.02 above to the Sub-lessor.
- (b) The Sub-lessee agrees, at its sole cost and expense, to cause a plan of survey prepared by a commissioned land surveyor of Jamaica to be completed indicating the location and dimensions of all Improvements, including all facilities, structure, infrastructure, and utility corridors contained in, on or about the Premises within two (2) months of the effective date of Substantial Completion of the Improvements or upon such other date as may be determined by the Chief Technical Officer. The plan of survey is to be prepared in accordance with the standards set by the Sub-lessor, acting reasonably, and is to be provided to the Sub-lessor in a digital format, together with no less than five (5) original copies thereof.

**1.04      Adjustment:**

In the event the reference plan of survey prepared in accordance with subsection 1.03(a) above provides that the total ground area of the Premises is greater than xxxxxxxx square feet, then the Annual Base Rent amount shall be automatically and retroactively adjusted upward at the land lease rate per square foot referred to in subsection 1.01 above for each square foot the total ground area of the Premises as provided in the survey is greater than ..... square feet. In the event the aforesaid survey provides that the total ground area of the Premises is less than ..... square feet, then the Annual Base Rent amount shall be automatically and retroactively adjusted downward at the land lease rate per square feet referred to in subsection 1.01 above for each square feet the total ground area of the Premises as provided in the survey is less than 40,000 square feet. In the event an adjustment to the Annual Base Rent amount results in a retroactive increase in the monthly rental amount payable hereunder, such amount shall be paid by the Sub-lessee to the Sub-lessor on the first (1st) day of the month immediately following the date of the survey or, where the aforesaid adjustment to the Annual Base Rent amount results in a retroactive decrease in the monthly rent payable hereunder, the Sub-lessee shall receive a credit equal to the total decrease in monthly rent, which credit shall be applied against the immediately following monthly (and subsequently following month(s), if any) rent payable by the Sub-lessee until such credit is exhausted.

## **SECTION 2.00 - Subsequent One (1) Year Periods**

### **2.01      Base Rent Adjustment Date:**

The Annual Base Rent or the Revised Annual Base Rent, as the case may be, shall be recomputed and adjusted throughout the Term on the terms and conditions herein provided. Subject to subsection 2.02.02 below, the Annual Base Rent shall first be recomputed and adjusted as at the end of the each year of the Term (being the first Subsequent Period – years 2 through 3 inclusive) with effect on the first Base Rent Adjustment Date (being December 31). Thereafter, subject to subsection 2.02. below, the Revised Annual Base Rent shall be adjusted on the Base Rent Adjustment Date for each remaining Subsequent Period.

2.02 On each Base Rent Adjustment Date during the Term, the Annual Base Rent (in the case of the first Base Rent Adjustment Date) and the Revised Annual Base Rent shall increase by the higher of 3% or United States Consumer Price Index for each remaining Subsequent Period.

## **SCHEDULE "G"**

### **ADDITIONAL PROVISIONS**

#### **1.1      Sub-lessor's Right of Termination**

Notwithstanding any other provisions of this Sub-Lease and in addition to any other rights the Sub-lessor may have under this Sub-Lease, if the Sub-lessee fails to have completed the Improvements within twelve (12) months of the issuance of the Commencement Date, then, at the sole and unconditional option of the Sub-lessor, the Sub-lessor shall be entitled, upon written notice to the Sub-lessee, to terminate this Sub-Lease without further obligation to the Sub-lessee.

#### **1.2      Sub-lessee's Right of Termination**

Notwithstanding any other provisions of this Sub-Lease to the contrary, if the Sub-lessor fails to issue an approval in connection with the construction of the initial Improvements to be constructed upon the Premises in accordance with the Drawings and Specifications within sixty (60) days of the Sub-lessee's delivery to the Sub-lessor of an application for approval and provided such application for approval is complete and compliant with the terms and conditions of this Sub-Lease, then, at the option of the Sub-lessee, the Sub-lessee shall be entitled, upon written notice to the Sub-lessor, to terminate this Sub-Lease without further obligation to the Sub-lessor.

#### **1.3      Relocation**

In the event the Jamaica Civil Aviation Authority confirms that the development or improvements to be constructed by the Sub-lessee pursuant to any approval granted by the Sub-lessor for the construction of the initial Improvements upon the Premises in accordance with the Drawings and Specifications will interfere with Air Navigation Facilities at the Airport, then in such event, the Sub-lessor agrees to use reasonable efforts to relocate the Sub-lessee and the Improvements to another location at the Airport upon the same terms and conditions of the Premises being subleased hereunder. In the event an alternate location at the Airport cannot be agreed upon by the parties, acting reasonably, then in such event, either party may, at its option, upon thirty (30) days' prior written notice to the other party, terminate this Sub-Lease without further obligation. For greater certainty, in the event of any such relocation, the parties hereto agree to enter into an amending agreement in respect of this Sub-Lease which agreement shall amend the description of the Premises.

#### **2.1      Sub-lessee's Work**

- (a) The Sub-lessee agrees to cause all Improvements (also sometimes referred to herein as the "Sub-lessee's Work") to be constructed and completed expeditiously and in a good, skillful and competent manner in accordance with the requirements of this Sub-Lease and in particular, in accordance with the requirements of Schedule "E" hereof. Without limiting the generality of the foregoing, the Sub-lessee represents and warrants to the Sub-lessor, and acknowledges that the Sub-lessor, in entering into this Sub-Lease is relying upon same, that it is the Sub-lessee's intention to commence construction of the Improvements on or about the Commencement Date and to complete the Sub-lessee's Improvements during the Construction Period.
- (b) Without limiting any other obligations imposed upon the Sub-lessee under this Sub-Lease and notwithstanding any other provisions under this Sub-Lease to the contrary, the Sub-lessee, at its sole cost, acknowledges and agrees that it shall be solely responsible for:
  - (i) any applicable development levies, or acreage assessments charged by municipal or other proper authorities as a condition of issuing authorizations for development or other permits relating to the Sub-lessee's Work;
  - (ii) All applicable municipal connection charges;
  - (iii) All applicable municipal improvement fees;
  - (iv) All environmental assessment reports and/or traffic studies;
  - (v) Site drawing preparation costs;

- (vi) Any site grading and/or site preparation work, including, if required, storm water management ponds;
- (vii) Any sub-surface work caused by soil contamination or ground water on the site required for the purposes of the construction of the Improvements or any other improvements to the Premises;
- (viii) Supplying temporary power to the site for the duration of the Construction Period;
- (ix) Supplying all plans to the Sub-lessor prior to commencement of any construction;
- (x) Obtaining all applicable building and use permits pertaining to the Sub-lessee's Work and the use of the Premises;
- (xii) Completing all work identified as Sub-lessee's Work and as stipulated in plans approved by the Sub-lessor; and
- (xiii) Designing, co-coordinating and constructing the System and the other Improvements.

### 3.1 Third Party Agreements; Consents

The Sub-lessee acknowledges that it shall be responsible under the Lease to secure whatever applicable regulatory approvals and/or consents may be required with respect to its proposed operations at the Premises from any relevant government authorities or agencies. The Sub-lessor agrees, at the Sub-lessee's request, to work cooperatively with the Sub-lessee to secure such approvals where possible.

### 4.1 Operation of System

- (a) Without limiting the generality of any other provisions of the Lease, the Sub-lessee shall:
  - (i) Subject to Force Majeure, ensure that the System is available on a twenty-four (24) hours per day basis as required by Contracting Airlines and Non-contracting Airlines;
  - (ii) operate and maintain the System and keep it clean, neat, orderly and in good and safe working order and repair, reasonable wear and tear excepted, pursuant to the National Resources Conservation Act Section 9, IFC guidelines below and the Jamaica Fire Code all as revised from time to time; all at the cost and expense of the Sub-lessee, and to the satisfaction of the Sub-lessor;
  - (iii) store its equipment and vehicles, at all times, when not in use, on the Premises, or in other areas on the Airport as identified by the Sub-lessor, which may be leased or licensed to the Sub-lessee;
  - (ii) make available an emergency back-up capability for the operation of the System;
  - (iii) ensure that every person supplying or receiving Fuel, Other Petroleum Products, and when applicable from the System, is properly trained and shall provide on demand to the Sub-lessor the training records of any person so engaged;
  - (iv) not permit any other party to conduct any business or activities for or on behalf of the Sub-lessee from the Premises without the prior written consent of the Sub-lessor; and
- (b) Should the Sub-lessee fail to show proper proof of training of any person in the handling of Fuel, Other Petroleum Products, or fuelling related vehicles or equipment as required by Section 4.1(v) above, the Sub-lessor may revoke the RAP of the person in question until the Sub-lessee can show or can certify to the Sub-lessor that the person is properly trained.
- (c) The Sub-lessee shall receive and store in the System, Fuel, Other Petroleum Products, and when applicable, only from a Qualified Supplier.
- (d) For the purposes of the orderly and effective operation of the System by the Sub-lessee, the Sub-lessor may, from time to time, designate an area or areas (the "**Supply Corridor**") at the

Airport outside of the Premises, for access and ingress to and from the Premises to Airside (or such other areas of the Airport as may determined by the Sub-lessor) by the Sub-lessee and/or Sub-lessor and their agents, customers, employees, invitees and servants for the purposes of this Sub-Lease, including, the fuelling of aircrafts at the Airport through the System. The rights granted to the Sub-lessee herein shall be in common with the Sub-lessor and other Sub-lessees of the Sub-lessor and users of the Airport and their respective agents, customers, employees, invitees, Sub-lessees and servants.

SCHEDULE “H”

[INTENTIONALLY DELETED]

SCHEDULE I

STATEMENT OF MONTHLY GROSS REVENUE: Service Station

Sangster International Airport

Month: \_\_\_\_\_

	Unleaded 90			Unleaded 87			Diesel			
Date	Opening Volume	Closing Volume	Volume Sold	Opening Volume	Closing Volume	Volume Sold	Opening Volume	Closing Volume	Volume Sold	TOTAL SOLD
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
21										
22										
23										
24										
25										
26										
27										
28										
29										
30										
31										

TOTAL Volume (I.G.)0.00

TOTAL Volume (I.G.)0.00

TOTAL Volume (I.G.)0.000.00

Total Volume  
Total Sales  
Concession Fee  
xx%  
Total Sum to be  
paid US \$

Prepared by:

Certified by:

SCHEDULE I

STATEMENT OF MONTHLY GROSS REVENUE: NON-FUEL PRODUCTS & SERVICES

.....

Sangster International Airport

Month: \_\_\_\_\_

	Product & Service 1			Product & Service 2			Product & Service 3			
Date	No Of Items	Sale Price	Total \$	No Of Items	Sale Price	Total \$	No Of Items	Sale Price	Total \$	Gross Revenue \$
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
21										
22										
23										
24										
25										
26										
27										
28										
29										
30										
31										

Total Gross Revenue

\$

Concession Fee xx% of Gross Revenue

\$

Prepared by:

Certified by:



**SCHEDULE I**  
**STATEMENT OF MONTHLY GROSS RECEIPT AND THE CONCESSION FEES**

**DATE:** \_\_\_\_\_

**TO:** MBJ AIRPORTS LIMITED

**FROM:** \_\_\_\_\_

**AGREEMENT DATED:** \_\_\_\_\_

THE FOLLOWING IS A TRUE AND ACCURATE STATEMENT OF THE GROSS REVENUE for the stated month

\_\_\_\_\_

1) Gross Revenue - Fuel sold	1) \$	_____
2) Gross Revenue Non-Fuel Products & Services	2) \$	_____
3) Gross Revenue Food & Beverage Outlet	3) \$	_____
CONCESSION FEES: Fuel Sold – xx%	4) \$	_____
Non-Fuel Products & Services xx%	5)\$	_____
Food & Beverage Outlet xx%	6)\$	_____
Total Concession Fee to be paid for the month	7)	_____
PLUS RENT FOR THIS MONTH	8) \$	_____
Total Concession Fee plus Rent to be paid	9) \$	_____
GENERAL CONSUMPTION TAX	10) \$	_____
TOTAL to be paid for the month	11) \$	_____

**CERTIFIED CORRECT BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

SCHEDULE J

ANNUAL STATEMENT OF GROSS REVENUE AND THE CONCESSION FEE EACH LEASE YEAR

DATE: \_\_\_\_\_

TO: MBJ AIRPORTS LIMITED

FROM: \_\_\_\_\_

AGREEMENT DATED: \_\_\_\_\_  
\_\_\_\_\_

AGREEMENT NO:

THE FOLLOWING IS A TRUE ACCURATE STATEMENT OF THE GROSS REVENUE (as defined in the LEASE) FOR THE LEASE YEAR

			(1) CONCESSION FEES: Fuel	(2) CONCESSION FEES: Non Fuel Products & Services	(3) CONCESSION FEES: Food & Beverage	(4) RENT		
PERIOD	Volume Fuel Sold: I.G.	Gross Revenue US \$:Fuel Sold	xx%	xx% of Non Fuel Gross Revenue US \$	xx% of Non Fuel Gross Revenue US \$	MONTHLY RENT US \$	GCT	TOTAL TO PAY US \$
LEASE MONTH 1								
LEASE MONTH 2								
LEASE MONTH 3								
LEASE MONTH 4								
LEASE MONTH 5								
LEASE MONTH 6								
LEASE MONTH 7								
LEASE MONTH 8								
LEASE MONTH 9								
LEASE MONTH 10								
LEASE MONTH 11								
LEASE MONTH 12								

CERTIFIED CORRECT BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

SCHEDULE "K"

INITIAL CONDITION REPORT

**APPENDIX I**  
**AIRPORT RULES AND REGULATIONS**

**APPENDIX II**  
**MBJ SECURITY BRIEF**

**APPENDIX III**  
**ENVIRONMENTAL MANAGEMENT PLAN**