

ANOKA GOLF COURSE AND ATHLETIC FIELDS LEASE AGREEMENT

Anoka County/Blaine Airport



2016

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ANOKA GOLF COURSE AND ATHLETIC FIELDS LEASE AGREEMENT

This Agreement is made between the Metropolitan Airports Commission, a public corporation established under Minn. Stat. §§ 473.601—473.679 (“MAC”), and the STATE OF MINNESOTA, by and through the Minnesota Amateur Sports Commission (“TENANT”) established by Minn. Stat. §§ 240A.01—240A.11, this ____ day of _____, 2016.

WHEREAS, MAC owns and operates Anoka County/Blaine Airport (“Airport”); and

WHEREAS, TENANT owns and operates athletic facilities in the State of Minnesota; and

WHEREAS, TENANT has secured funding from the State of Minnesota and donations from the Professional Golf Association Tour and other sources for a Golf Course, putting course, teaching center and driving range located on the property that is the subject of this Agreement; and

WHEREAS, MAC has determined that it currently has no specific airport use suitable for the properties shown on attached Exhibits B and E and Sections 2 and 3 of this Agreement and is authorized to lease the property for compatible uses; and

WHEREAS, TENANT desires to lease the property from MAC as described in Exhibit A and Sections 2 and 3 of this Agreement; and

WHEREAS, TENANT desires to lease the property to operate a Golf Course and Athletic Fields on the property; and

WHEREAS, MAC has determined that the authorized use under this Agreement would not interfere with airport operations; and

WHEREAS, the execution of this Agreement will be based on a determination by the MAC and the FAA that the property is not needed for exclusive aviation use during the proposed lease period and that the use of the area for golf and recreational purposes does not conflict with the safe operation of the airport; and

WHEREAS, this Agreement has been approved by the Commission on _____, 2016; and

WHEREAS, this Agreement has been approved by TENANT on _____, 2016; and

WHEREAS, this Agreement replaces the Athletic Fields Lease Agreement signed May 3, 2016 and the Anoka Golf Course Agreement signed February 2, 2002 and as such the Athletic Fields Lease Agreement and the Anoka Golf Course Agreement shall be terminated upon the effective date of this Agreement.

NOW THEREFORE, MAC and TENANT, in consideration of the rents, covenants and considerations hereinafter specified, do hereby agree each with the other as follows:

1. **DEFINITIONS**

- 1.1 Agreement. This Anoka Golf Course and Athletic Fields Lease Agreement.
- 1.2 Airport. The Anoka County/Blaine Airport.
- 1.3 Athletic Fields. Complex of ball diamonds, soccer, football, rugby and Lacrosse fields constructed and located on the Leased Property II.
- 1.4 Books and Records. Adequate accounting records, in accordance with GAAP and the requirements of this Agreement.
- 1.5 Concurrent Use of Property. The use of dedicated Airport property for a compatible non-aviation activity while at the same time the property serves the primary purpose for which it was acquired or such other definition as the FAA may adopt from time to time.
- 1.5 DNR. The Minnesota Department of Natural Resources.
- 1.6 EA. An Environmental Assessment.
- 1.7 EAW. An Environmental Assessment Worksheet.
- 1.8 EIS. An Environmental Impact Statement.
- 1.9 Effective Date. January 1, 2017
- 1. 10 Environmental Claims. All claims or causes of action at common law or in equity which arise from or relate to environmental regulation or law and the Leased Properties.
- 1.11 Environmental Law. Any common law or duty, case law or ruling, statute, rule, regulation, law, ordinance or code, whether local, state or federal, that regulates, creates standards for or imposes liability or standards of conduct concerning any element, compound, pollutant, contaminant, or toxic or hazardous substance material, or waste, or any mixture thereof or relates in any way to emissions or releases into the environment or ambient environmental conditions, or conduct affecting such matters.
- 1.12 Environmentally Regulated Substances. Any element, compound, pollutant, contaminant, or toxic or other hazardous substance, material or waste, or any mixture thereof, designated, referenced, regulated or identified pursuant to any Environmental Law.
- 1.13 FAA. The Federal Aviation Administration.

- 1.14 Fixed Rent. Has the meaning given in Sections 6.1.2 and 6.2.
- 1.15 GAAP. Generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity or entities as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.
- 1.16 Golf Course. A golf facility constructed and located on the Leased Property I.
- 1.17 Gross Revenue. Has the meaning given in Section 6.1.1.
- 1.18 Improvement(s). Any betterment or addition to the Leased Properties, including but not limited to the items listed in attached **Exhibit D**.
- 1.19 Indemnities. MAC, Commission members, its officers, employees or agents, any successor or successors to MAC's interest.
- 1.20 Leased Properties. The properties at the Airport, as described in Sections 2 and 3 of this Agreement.
- 1.21 Leasehold Improvement Termination Amount. Has the meaning given in Section 7.1.1.
- 1.22 MAC. The Metropolitan Airports Commission, a public corporation established under Minn. Stat. §§ 473.601 through 473.679.
- 1.23 MN/DOT. The Minnesota Department of Transportation.
- 1.24 Necessary Approvals. Has the meaning given in Section 5.2.1.
- 1.25 Percentage Rent. Has the meaning given in Section 6.1.3.
- 1.26 PGA. Professional Golf Association
- 1.27 Related Entities. Entities controlled by TENANT, controlling TENANT, under common control with TENANT, or contracting with TENANT for the maintenance, management, or operation of any part of the Leased Properties, including but not limited to subtenants, assignees, successors, partners, joint-ventures, concessionaires, management entities, and licensees.
- 1.28 Runway Protection Zone (RPZ). A restricted area off a runway's primary surface that enhances the protection of people and property on the ground, as defined by the FAA and shown in **Exhibit C** or as may be modified from time to time in accord with FAA requirements, and is encompassed by Runway Safety Zone A,

as defined by the Minnesota Department of Transportation, as also shown on **Exhibit C**, or as such areas may be re-designated by the FAA, the Minnesota Department of Transportation or other applicable law or government entity during the term of this Agreement.

1.29 TENANT. The Minnesota Amateur Sports Commission established under Minn. Stat. §§ 240A.01 through 240A.11.

2. **LEASED PROPERTY I (GOLF COURSE)**

MAC leases the Leased Property I, as described in the attached **Exhibits A and B**, to TENANT in accordance with the terms, conditions, and provisions contained in this Agreement.

3. **LEASED PROPERTY II (ATHLETIC FIELDS)**

MAC leases the following Leased Property II to TENANT in accordance with the terms, conditions, and provisions contained in this Agreement:

A portion of the lands constituting Anoka County-Blaine Airport in Anoka County, Minnesota, generally depicted on **Exhibit E**, more particularly described as:

That part of the East Half of the Northwest Quarter of the Southwest Quarter and of the Northeast Quarter of the Southwest Quarter of Section 21, Township 31, Range 23, Anoka County Minnesota which lies westerly of County State Aid Highway No. 52 (Radisson Road) according to Anoka County Highway Right-of-Way Plat No. 62 on file and of record in the office of the Anoka County Recorder and which lies northerly of the following described Line X;

Commencing at the Northwest corner of the South Half of said Section 21; thence easterly along the north line thereof 661.21 feet to the northwest corner of said East Half of the Northwest Quarter of the Southwest Quarter; thence southerly along the west line thereof to its intersection with a line 1294.00 feet southerly of and parallel with said north line of the South Half and the point of beginning of Line X to be described; thence easterly along said parallel line 279.49 feet; thence northerly, deflecting 90 degrees to the left, a distance of 144.00 feet; thence easterly, deflecting 90 degrees to the right, a distance of 182.00 feet; thence northerly, deflecting 90 degrees to the left, a distance of 210.00 feet; thence easterly, deflecting 90 degrees to the right, a distance of 411.00 feet; ; thence southerly, deflecting 90 degrees to the right, a distance of 110.00 feet; thence easterly, deflecting 90 degrees to the left, a distance of 338.00 feet; thence southeasterly, deflecting 45 degrees to the right, a distance of 258.00 feet; thence easterly, deflecting 45 degrees to the left, a distance of 284.00 feet; thence northeasterly, deflecting 25 degrees to the left, a distance of 362.64 feet to the westerly line of said County State Highway No. 52 and said Line X there terminating and as designated on the attached Exhibit A and made a part hereof.

Said Leased Property II is subject to the rights of the County for County Road Number 87 right-of-way as shown on construction plans and County Half Section Maps.

Said Leased Property II contains 49.27 acres more or less; 3.00 acres of which is subject to existing easement for County Road Number 87.

4. TERM

Subject to FAA Concurrent Use Approval described in Section 5.2.2 the term of this Agreement shall commence on January 1, 2017 and shall continue for thirty (30) years, expiring on December 31, 2046.

5. USE

5.1 Authorized Purpose

5.1.1 Golf and Related Activities

The Golf Course may include, but is not limited to, an 18-hole golf course, driving range, putting greens, golf learning center, putting course, and club house. TENANT shall use and occupy Leased Property I only for the operation of the Golf Course, related amateur sports activity, cross-country skiing, and social functions. TENANT shall not use the Leased Property I for any other purpose without the prior written consent of MAC.

5.1.2 Athletic Fields Activities

TENANT shall use and occupy Leased Property II only for recreational purposes as follows:

Solely for the maintenance and operation of athletic fields, including ball diamonds, soccer, football, rugby, and Lacrosse fields, ancillary uses and related amateur sports activities.

TENANT shall not use the Leased Property II for any other purpose without the prior written consent of MAC.

5.1.3 Airport Restrictions

TENANT shall comply with all requirements of the FAA regarding use of the Leased Properties. TENANT shall not allow groups of people to congregate in the Runway Protection Zone. TENANT shall not allow any conduct or activity in any areas that may interfere with Airport operations or aircraft navigation. TENANT is prohibited from collecting golf balls on MAC property outside the Leased Property I or in any areas that may

jeopardize Airport or aircraft safety without a MAC escort or prior written approval of MAC, such approval shall not be unreasonably withheld.

5.1.4 Maintenance, Operation, and Management of Leased Properties

TENANT shall not assign, sublet, or otherwise transfer its interest in this Agreement to any person or entity not under common control of TENANT without the prior written consent of MAC, such consent not to be unreasonably withheld. Provided, however, that MAC consents to TENANT entering into a management agreement or sublease of the Leased Properties with the National Sports Center Foundation. This Agreement is binding on all Related Entities.

TENANT agrees to supply MAC with a copy of any and all agreements between the TENANT and the National Sports Center Foundation, or any other entity regarding the maintenance, management, or operation of the Leased Properties or any part thereof. Such documentation with any entity other than the National Sports Center Foundation must be submitted to MAC prior to MAC's approval of any assignment/sublease.

5.2 Construction and Approvals

5.2.1 Necessary Approvals

TENANT understands that certain approvals are necessary for any construction or improvements made on the Leased Properties. MAC agrees to execute all documents or applications necessary for the approval process but it is the TENANT's responsibility to obtain all the Necessary Approvals, except as otherwise stated in this Agreement. TENANT agrees to bear all financial risk regarding any construction or improvement it commences on the Leased Properties prior to approval, the possibility that the requisite approvals may not be granted, and the possibility that the FAA may require changes to this Agreement, the Leased Properties or the intended use of the Leased Properties. TENANT further understands and agrees that the FAA and DNR and other applicable entities have concerns about wildlife management on airports, golf courses and athletic fields adjacent to or on airports, and other areas near airports and aircraft operations areas. TENANT agrees to take all actions necessary at the commencement of any construction or improvement on the Leased Properties and throughout the term of this Agreement to comply with all required wildlife management.

Necessary Approvals may include, but are not limited to:

- (i) FAA Concurrent Use of Property approvals;
- (ii) Any other FAA or federal approvals;

- (iii) Environmental approvals such as the preparation and approval of an EA, an EAW, and if determined necessary, an EIS;
- (iv) Approvals from agencies such as the DNR, the Minnesota Pollution Control Agency, MN/DOT, and the United States Corps of Engineers;
- (v) Permits required by the applicable Watershed District;
- (vi) Applicable approvals from the City of Blaine; and
- (vii) Any other federal, state or local permits or approvals that may be required.

Necessary Approvals are deemed received when the appropriate entity has granted such approval for the project in writing and any resulting litigation or administrative proceeding related to such approval has been decided by the court or entity having the highest level of jurisdiction or the time for an appeal to a higher entity has expired. TENANT shall provide MAC with a copy of all written approvals. The parties agree that MAC has final determination of when all Necessary Approvals have been received and will so inform TENANT in writing.

5.2.2 FAA Concurrent Use Approval

TENANT understands that MAC needs Concurrent Use Approval from the FAA to enter into a long-term lease of the Leased Property for use as the Golf Course. MAC is responsible for obtaining the FAA Concurrent Use Approval and the costs associated with such approval and agrees to use all reasonable efforts to obtain such approval in a timely manner. Even though such approval has not yet been granted, TENANT desires to begin construction and use of the Leased Property.

If the Concurrent Use Approval is not granted, MAC shall send TENANT written notice of such rejection and this Agreement shall terminate at the end of the next month after MAC has supplied TENANT with such notice. If the Concurrent Use Approval is not granted, then MAC shall not owe TENANT any money and TENANT agrees to vacate the Leased Property, and at MAC's discretion, TENANT shall return the Leased Property according to the redelivery terms in Section 7.4 at TENANT's sole cost by a date determined by MAC and communicated to TENANT in writing. TENANT agrees to bear such costs.

5.2.3 Wetland Mitigation

The parties recognize that construction or improvement projects on the Golf Course, Athletic Fields and related facilities on the Leased Properties may impact existing wetlands. The TENANT shall conduct and pay all costs associated with any required wetland mitigation. If TENANT chooses to conduct on-site wetland mitigation, it is limited to the FAA approved maximum of twenty (20) acres on-site mitigation for up to ten

(10) acres of wetland impact. TENANT will provide MAC with all necessary information and documentation to record a perpetual easement on any wetland mitigation area and/or any other required actions.

5.2.4 Environmental Processes

TENANT agrees to pay all costs associated with the EA, EAW, or EIS necessary for any construction or improvements to the Leased Properties.

5.2.5 City Sewer and Water

TENANT agrees to bear all financial costs associated with connecting to and using city sewer and/or water for those structures situated on the Leased Properties that require availability to sewer and/or water including, but not limited to, sewer access charges, water access charges, and trunk charges.

5.2.6 Wells for Irrigation

TENANT agrees to bear all financial costs associated with the installation, operation, maintenance, and removal of any irrigation wells on the Leased Properties. Wells for irrigation purposes only are permitted on the Leased Properties with prior written approval by MAC, the city and any other applicable governmental entities. MAC approval shall not be unreasonably withheld. The TENANT agrees to assume full liability for any environmental liabilities that may result from the installation, operation, maintenance or removal of such wells.

5.2.7 Plan Review and Construction

TENANT shall provide MAC with detailed plans and specifications for its intended Improvements, changes, or alterations of the Leased Properties for written approval prior to commencing such construction. Such approval not to be unreasonably withheld. TENANT agrees to comply with all provisions contained in Section 11. TENANT agrees to bear all costs of development, construction engineering fees, utilities and all other costs associated with the Improvements of the Leased Properties.

5.2.8 Security Fencing

TENANT agrees to relocate, replace, or maintain, at its expense and in accordance with FAA standards, security fencing between the Leased Properties and the Airport and any other fencing damaged or removed by TENANT or its Related Entities in locations to be determined by MAC. At all times before, during and after construction, TENANT must maintain

fencing and other Airport security measures as determined by MAC so as not to jeopardize Airport safety or security.

6. PAYMENT OF RENT

6.1 Leased Property I Rent

As rent for Leased Property I, TENANT shall pay to MAC the greater of Fixed Rent for Leased Property I or Percentage Rent based on provisions of this Section. Payments shall be in a form acceptable to MAC. Rent shall be calculated based upon a calendar year.

6.1.1 Gross Revenue Definition

The total amount of all revenue of every nature and kind from all sales of merchandise and/or services and all other receipts from all activities conducted in, at, or from all or any part of the Leased Property I, whether the same be for cash, barter, credit, draft, check, note, charge account, gift or merchandise certificates purchased, or any other disposition of value regardless of collection, and whether made by TENANT and/or Related Entities, if any. Gross Revenue shall include all orders and sales, and the provision of all services which originate or are provided in, at, or from any portion of the Leased Property I. Gross Revenue applies whether delivery or performance is made from the Leased Property I or from another place, and orders and sales of goods and services delivered and performed from the Leased Property I as a result of orders taken elsewhere, orders or sales mailed, telephoned or faxed, which are received at or filled from the Leased Property I, all sales and revenue accruing by vending devices. Gross Revenue further includes all revenues derived from Golf Course green fees, food and beverage sales, merchandise sales, pro shop revenues, golf cart and club rental fees, driving range income, instructional fees, facility rentals, tournaments and league fees. Any deposit which is not refunded shall be included within the meaning of Gross Revenue. There shall be no deduction or exclusion from Gross Revenue unless specifically and expressly set forth herein. The term Gross Revenue shall not include:

- (i) Merchandise returned to the extent of the cash refunded or credit given, provided that the sale price of said returned items was originally included in Gross Revenue.
- (ii) The amount of any sales tax imposed by any governmental authority directly on sales and collected from the customers provided the amount of such tax is separately recorded. Any rent or fees paid to MAC are not considered sales tax.

- (iii) Sums and credits received in settlement of claims for loss of or damage to merchandise.
- (iv) In-kind contributions from corporations to support youth golf and which are actually used to support youth golf. The fair market value of all other corporate sponsorships is included in Gross Revenue.
- (v) Legislative appropriations and corporate donations, provided that such amounts are used solely for capital Improvements. Documentation satisfactory to MAC must be submitted demonstrating such use.
- (vi) Fees charged for cross-country skiing and ski equipment rental.
- (vii) Fees personally generated by and paid directly to one head golf pro; all other teaching and instructional fees are included in Gross Revenue, whether or not paid directly to TENANT.
- (viii) Any other exclusion approved in advance by the joint board created in Section

6.1.2 Leased Property I Fixed Rent

As Fixed Rent for Leased Property I TENANT shall pay an amount of \$75,000 per year.

For any period of holding over that is not a full calendar year, then the amount due for the last year shall be prorated based upon the number of days from January 1st of such year until date on which this Agreement is terminated to a full calendar year of three-hundred and sixty-five (365) days.

6.1.3 Leased Property I Percentage Rent

Percentage Rent based upon the Gross Revenue generated by the Leased Property I for each calendar year shall be calculated by multiplying the percentage associated with the total Gross Revenue, identified in the table below, against the total Gross Revenue for the calendar year:

Amount of Gross Revenue for the Calendar Year	Percentage for Calendar Year
\$0 - \$1,000,000.00	7% of Gross Revenues
\$1,000,000.01 - \$1,500,000.00	8% of Gross Revenues
\$1,500,000.01 - \$2,000,000.00	9% of Gross Revenues
\$2,000,000.01 - \$2,500,000.00	10% of Gross Revenues
\$2,500,000.01 +	11% of Gross Revenues

Percentage Rent is not incremental; all Percentage Rent for the calendar year shall be paid at the highest applicable percentage rate. For example, if Gross Revenue for the calendar year is \$2.5 million, the applicable Percentage Rent is $\$2,500,000 \times 0.11 = \$275,000$.

6.2 Leased Property II Fixed Rent

As Fixed Rent for Leased Property II TENANT shall pay an amount of \$90,000 per year for years 1, 2, and 3, \$95,000 per year for years 4 and 5, and escalating 3% per year after year 5 during the remaining Term. The rental rate must be consistent with the federal revenue diversion policy. Thus, the amount of Fixed Rent charged for Leased Property II may be changed during the term of the Agreement in order to maintain compliance with federal revenue diversion policy upon sixty (60) days written notice from the Commission to TENANT, at which time TENANT may elect to pay such additional rent or terminate the Agreement.

6.3 Payment Schedule

6.3.1 Leased Property I and II Fixed Rent Payment

The Fixed Rent for Leased Properties I and II for each calendar year shall be paid in full, without invoice, on or before July 1 for the current calendar year, unless MAC notifies TENANT of a later payment date.

6.3.2 Property I Percentage Rent and Estimated Percentage Rent Payment

If the Percentage Rent for Leased Property I for the calendar year exceeds the Fixed Rent for Leased Property I paid for the calendar year, TENANT shall pay to MAC the amount that such Percentage Rent exceeds such Fixed Rent for Leased Property I. A reasonable estimation of the Percentage Rent shall be paid each calendar year on or before November 15 for the current calendar year, unless MAC notifies TENANT of a later payment date. The estimated Percentage Rent shall consist of the actual Percentage Rent for the calendar year through September and the amount of the Percentage Rent that is estimated for the remainder of the calendar year. If the Percentage Rent exceeds the estimated Percentage Rent at the end of the calendar year, the amount shall be reconciled and paid according to Section 6.4.

6.3.4 Leased Property I Annual Percentage Report

On or before November 15 of each calendar year, and simultaneous with the payment of the estimated Percentage Rent, TENANT shall submit to MAC a report of actual Gross Revenues for the calendar year through September, estimated Gross Revenues for the remainder of the calendar

year, and any other information relating to such Gross Revenues as MAC may reasonably require. The reports shall be in a form acceptable to MAC.

6.4 Leased Property I Year-End Reconciliation and Reconciliation Report

On or before May 1 of each calendar year, TENANT shall complete a year-end reconciliation and submit a reconciliation report to MAC for the previous calendar year.

The reconciliation report shall include an accounting of the Gross Revenue from the preceding calendar year compiled by a certified public accountant selected by TENANT at TENANT's sole expense. The accounting shall include an itemization of all Gross Revenue, including but not limited to, the receipts for food, beverages, greens and ticket fees, equipment sales and rental, building or room rental, receipts from Related Entities and other service and sales, exceptions to Gross Revenue, and any other information requested by MAC.

As part of the year-end reconciliation, the level of Percentage Rent shall be determined based on the total Gross Revenue for the calendar year. If the Percentage Rent due for the full calendar year exceeds the Fixed Rent or estimated Percentage Rent that has been previously paid to MAC for the calendar year, TENANT shall pay such additional amounts to MAC simultaneous with the reconciliation report. MAC shall credit the amount of any overpayments made by TENANT against TENANT's future rent payments, provided, however, the amount of rent for the calendar year shall not be less than the greater of the Fixed Rent or Percentage Rent. If the amount due exceeds five percent (5%) of the annual rent, TENANT shall pay to MAC interest at the rate set forth in Section 6.5 on the unpaid amount due for the time period beginning October 31 through the date the amount is paid in full to MAC.

6.5 Interest

For any rent or fees due under this Agreement, TENANT shall pay interest for late or delinquent payments of twelve (12) percent per annum on any past due balance calculated from the date the amount is due until the close of the business day upon which the delinquent payment is received by MAC.

6.6 Joint Board for Dispute Resolution

MAC and TENANT agree to create a joint board as follow:

The joint board shall be established by: (i) MAC and TENANT each appointing one board member, and (ii) MAC and TENANT jointly appointing a third board

member who has experience in the operation and management of a golf course. If MAC and TENANT cannot agree as to the appointment of such third board member, then the two board members that MAC and TENANT have individually appointed shall appoint such third board member. Any and all costs associated with the creation and operation of such panel shall be shared and paid equally by MAC and TENANT.

The joint board may review issues or disputes between the parties regarding:

- (i) The contents of the Leased Property I Annual Percentage Report and/or the Reconciliation Report and associated payments to be submitted by TENANT under Sections 6.3.4 and 6.4, or any element thereof, including but not limited to a disagreement as to whether an item of revenue should be included as Gross Revenue
- (ii) Any other matters the parties mutually agree to submit to the joint board.

A determination by a majority of the joint board shall be binding upon the parties as to all disputes regarding ten thousand dollars (\$10,000) or less; and MAC and TENANT shall abide by such determination. A determination by the joint board shall be non-binding as to all disputes regarding more than ten thousand dollars (\$10,000); and MAC and TENANT retain the right to litigate any disputes over this amount.

6.7 Tenant's Books and Records

6.7.1 Maintenance of Accounting Records

TENANT shall maintain Books and Records, for:

- (i) All transactions relevant to this Agreement;
- (ii) All exclusions from Gross Revenue claimed by TENANT;

TENANT shall cause to be installed on TENANT's Leased Properties, and shall at all times use, such cash registers, invoicing machines, sales slips and other accounting equipment, devices and firms as are reasonably necessary to record properly, accurately, and completely all sales at the Leased Properties of TENANT's Gross Revenues.

6.7.2 Books and Records

Books and Records shall include detailed analysis listing all of TENANT's operations at the Leased Properties in the form of printed, written or electronic media. Books and Records shall also include, but are not limited to:

- (i) All original accounting source documents detailing transactions relevant to this Agreement, including but not limited to:
 - (a) Operating/financial statements,
 - (b) A complete (cumulative) general ledger,
 - (c) Monthly sales journals detailing each rental transaction for the month,
 - (d) Reconciliation between the financial records and any reports submitted to MAC,
 - (e) Bank statements applicable to the operation of the Golf Course,
 - (f) Corporate trial balances,
 - (g) Corporate contracts with corporate customers,
 - (h) Annual audited financial statements and related reports on internal controls (including access to management representation letters, provided, however, that if the management representation letters of Related Entities are not public data under Minnesota law, MAC has the right to view but not to obtain copies of such letters),
 - (i) Electronic media documenting accounting records, and
 - (j) Other sales related documents; and
- (ii) Any documentation or records supporting any exclusions from Gross Revenue claimed by TENANT or Related Entities.

6.7.3 Computer Records

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

6.7.4 Cooperation by TENANT

TENANT shall provide the name and telephone number of TENANT's or Related Entities' accounting manager or the like who has a thorough knowledge of the accounting system as it pertains to this Agreement and who will assist MAC with MAC's audit. TENANT and Related Entities will also allow interviews of past and present employees who were involved in the financial or operational activities of TENANT.

6.7.5 Maintenance of Books and Records

TENANT shall keep all Books and Records required by this Agreement for at least six (6) years after end of the applicable year, or in the event of a claim by MAC, until such claim of MAC has been fully ascertained, fixed and paid.

6.7.6 Books and Records of Related Entities

TENANT's obligations with respect to Books and Records shall extend to TENANT's Related Entities. TENANT shall be responsible for informing such parties of these obligations and assuring performance of these obligations by such parties.

6.8 Right to Audit

6.8.1 Audit Findings

MAC, the FAA, the Comptroller General of the United States or any of their duly authorized representatives shall have the right to authorize one (1) or more audits of TENANT's and Related Entities' Books and Records pertaining to any of its operations on the Leased Properties. If either an annual audit or an audit performed by MAC discloses an underreporting of Gross Revenue, TENANT shall pay to MAC any amounts due under this Agreement within fifteen (15) days of written notice by MAC, together with interest calculated from the date the amount(s) were due at the interest rate for late payments stated in this Agreement. In addition, if the audit reveals an underreporting of Gross Revenue by five percent (5%) or more for any twelve (12) month period, TENANT shall reimburse MAC for the full cost of the audit and any applicable legal fees. MAC's rights under this Section shall be in addition to any other rights or remedies MAC may have.

6.8.2 State and Legislative Audit

Pursuant to Minn. Stat. § 16C.05, subd. 5, the Books and Records, documents and accounting procedures and practices of MAC relevant to this Agreement shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

6.8.3 Provision of Audit Workspace

TENANT and Related Entities agree to provide appropriate work space to conduct the audit and free access to copiers, fax machines and other needed office equipment. TENANT and Related Entities will also make the requested original Books and Records available within fifteen (15) working days from the date of written request by MAC's representative ("MAC Auditor") and will freely lend its own assistance in conducting the audit. Such Books and Records shall be provided to the MAC Auditor in

the Minneapolis-St. Paul metropolitan area for inspection during business hours. TENANT agrees that in the event that the requested documentation is not provided within such fifteen (15) working day period, TENANT shall bear the expense of the MAC Auditors to travel to and return from the location(s) where such Books and Records are maintained to conduct the audit. Such expenses will include transportation, lodging, food and other out-of-pocket expenses for the full duration of the time needed to complete the audit.

6.8.4 Survival of Tenant's Duties and MAC's Rights

The TENANT's duty to maintain Books and Records and MAC's rights under this Agreement to inspect and audit the Books and Records of TENANT shall survive the expiration or earlier termination of this Agreement.

6.9 Right to Receive Rent

MAC represents and warrants that it solely is entitled to all rents payable under the terms of this Agreement.

7. TERMINATION

7.1 Termination for Airport Purposes

7.1.1 Buy Out/Cancellation for MAC Purposes

In the event MAC in its sole discretion shall desire to lease, utilize or develop all or any portion of the Leased Properties for any Airport purpose which is inconsistent with this Agreement during the term of this Agreement, including but not limited to aeronautical uses, MAC shall have the right in its sole discretion to terminate this Agreement upon one-hundred eighty (180) days advance written notice to TENANT. In the event MAC shall terminate this Agreement, MAC shall pay to TENANT within thirty (30) days after the date TENANT shall surrender the Leased Properties to MAC in the condition required pursuant to this Agreement, the Leasehold Improvement Termination Amount in effect on the effective date of such termination with respect to each element or portion of the leasehold Improvements.

The Leasehold Improvement Termination Amount shall be applicable to each Improvement constructed on the Leased Properties and financed by TENANT that are built after the effective date of this Agreement. Such Leasehold Improvement Termination Amount shall be the unamortized cost (not including cost of personal property) of each Improvement as if fully amortized on a straight-line basis (zero percent interest) over the time periods specified in **Exhibit D** or such time period from date of

installation to expiration of Agreement, whichever is less. The parties agree that TENANT is not entitled to Leasehold Improvement Termination Amount for any:

- (i) Improvements financed by MAC, or
- (ii) Improvements not specified in **Exhibit D** unless TENANT has received prior written approval from MAC,
- (iii) Improvements under one thousand dollars (\$1,000),
- (iv) Improvements or other costs associated with the Corner Parcel or Commercial Parcel as described below

This Section constitutes all compensation to which TENANT is entitled in the event of termination.

7.2 Corner and Commercial Parcels

Subject to TENANT'S Right of First Offer with respect to the Corner Parcel that is described below, MAC hereby reserves the right to unilaterally amend this Lease on one or two occasions to terminate TENANT's leasehold estate in either or both (a) the approximately 3 acre parcel located in the northeast portion of Leased Property II ("Corner Parcel") that is depicted on the attached **Exhibit F**; and/or (b) the approximately 10 acre parcel located in the south portion of Leased Property II ("Commercial Parcel") that is depicted on the attached **Exhibit F** to facilitate MAC's sale or lease the Corner Parcel and/or the Commercial Parcel to one or two third parties. To exercise this right, MAC must deliver a written notice of MAC's exercise of this right to TENANT (a "Partial Termination Notice"). A Partial Termination Notice must state that MAC is amending this Lease to remove either the Corner Parcel, the Commercial Parcel or both the Corner Parcel and the Commercial Parcel from the terms of the Lease to facilitate a sale or lease of the referenced parcel to a third party. A Partial Termination Notice is effective on the date ninety (90) days after TENANT's receipt of the Partial Termination Notice. To confirm the partial termination provided for in the Partial Termination Notice, MAC must, within thirty (30) days after the date TENANT's receipt of the Partial Termination Notice, deliver to TENANT an amendment to this Lease, signed by MAC, that (a) amends the legal description of Leased Property II in Section 3 of this Lease to except the legal description of the Corner Parcel, Commercial Parcel or both, as applicable, from the legal description of Leased Property II; and (b) amends Section 6 of this Lease to reduce TENANT's rent in proportion to the reduction of the square footage of Leased Property II resulting from the Amendment. TENANT must execute and return the

amendment to MAC within ten (10) days after TENANT's receipt of the amendment from MAC, but the partial termination resulting from MAC's delivery of the Partial Termination Notice to TENANT is effective as of the date ninety (90) days after MAC's delivery of the Partial Termination Notice whether or not TENANT signs and returns the amendment. TENANT is not entitled to receive compensation of any kind for MAC's exercise of MAC's right to terminate this Lease with respect to the Corner Parcel or Commercial Parcel. At any time between TENANT's receipt of MAC's Partial Termination Notice and the date ninety (90) days after TENANT's receipt of the Partial Termination Notice, TENANT may remove any trade fixtures or personal property of TENANT's that is located on the Corner Parcel or Commercial Parcel, as applicable, provided TENANT repairs any damage caused by such removal. Any trade fixtures or personal property not so removed shall be conclusively deemed to have been abandoned, and MAC or its successor in interest may dispose of such trade fixtures or personal property as they see fit. At any time during the term of this Lease, MAC or any third party designated by MAC may enter upon the Corner Parcel and the Commercial Parcel to allow MAC or any such third party to perform due diligence activities with respect to the Corner Parcel or the Commercial Parcel, so long as such activities do not materially interfere with TENANT's use of the Corner Parcel or the Commercial Parcel.

If Tenant does not execute and return the amendment to this Lease provided by MAC within the ten (10) day period provided above, TENANT will be in default under this Agreement and, notwithstanding anything else in this Lease, MAC may immediately, and without providing any further notice or cure period to TENANT commence an action in Anoka County District Court to confirm the termination of this Lease with respect to the Corner Parcel, the Commercial Parcel or both, as applicable, and to recover from TENANT all actual and consequential damages, MAC suffers or incurs as a result of TENANT'S failure to timely execute and return the Lease amendment. If MAC prevails in any such action, MAC shall also be entitled to recover MAC's reasonable attorney's fees and costs.

As a part of the consideration for Tenant's execution of this Lease, MAC hereby grants TENANT a Right of First Offer as provided for in this Section 7.2 ("Right of First Offer") with respect to the Corner Parcel (but not with respect to the Commercial Parcel). If, during the first ten years of the term of this Lease, MAC exercises MAC's right to unilaterally amend this Lease to terminate TENANT's leasehold estate in the Corner Parcel, MAC will obtain a signed letter of intent from MAC's prospective tenant for or buyer of the Corner Parcel setting forth, as applicable, either the lease term and the rent the prospective tenant will pay to MAC or the purchase price the prospective buyer will pay to MAC and any other terms MAC and such prospective tenant or buyer may deem appropriate (the

“LOI”). MAC will deliver the LOI to TENANT no later than earlier than the date MAC delivers the Notice of Partial Termination to TENANT and no later than the date thirty (30) days after MAC delivers the Notice of Partial Termination to TENANT. TENANT may, at any time within thirty (30) days after the date MAC delivers the LOI to TENANT, submit a signed, non-contingent offer to purchase or lease (as applicable to match the LOI) the Corner Parcel from MAC (a “TENANT Offer”). The terms of the TENANT Offer must match the terms of the LOI with respect to the legal description of the Corner Parcel and the type of disposition (purchase versus lease) and must match or exceed the Net Effective Rental Rate or purchase price, as applicable, to be paid to MAC. The terms of the TENANT Offer may, but need not, match any other terms of the LOI and may include additional, commercially reasonable terms not included or addressed in the LOI.

The TENANT Offer must (i) include evidence of an official action by the Minnesota Amateur Sports Commission to exercise this Right of First Offer, (ii) provide the Corner Parcel will be leased or sold by MAC in “as-is” condition with no representations as to the condition of the Corner Parcel by MAC, (iii) if applicable, provide any sale by MAC will use a limited warranty deed; (iv) provide for a closing date that is not more than ninety (90) days after the date TENANT delivers the TENANT Offer to MAC. If TENANT fails to deliver a signed, non-contingent TENANT Offer to MAC within the aforesaid thirty (30) day period, then such Right of First Offer shall terminate and MAC may proceed to lease or sell the Corner Parcel, as described in the LOI, to the proposed tenant or buyer identified in the LOI on any terms and conditions MAC may choose. If TENANT does deliver a signed, non-contingent TENANT Offer to MAC within the aforesaid thirty (30) day period, MAC may accept or reject the TENANT Offer in MAC’s sole discretion by written notice delivered to TENANT within forty five (45) days after MAC’s receipt of the TENANT Offer (provided TENANT delivered the TENANT Offer is delivered within the time period required under this Section 7.2). If MAC rejects the TENANT Offer, MAC may proceed to lease or sell the Corner Parcel, as described in the LOI, to the proposed tenant or buyer identified in the LOI on any terms and conditions MAC may choose; provided, however, MAC may not lease the Corner Parcel to the prospective tenant identified in the LOI for less than 90% of the Net Effective Rental Rate set forth in the TENANT Offer and MAC may not sell the Corner parcel to a prospective buyer identified in an LOI for a purchaser price that is less than the purchase price set forth in the TENANT Offer. As used herein, the term “Net Effective Rental Rate” means the actual rental rate to be received by MAC per year, on the average, during the proposed term, provided that if a non-fixed rental rate is proposed in the Offer, the minimum annual guarantee amount may be used to determine the actual rental rate or any other method MAC deems reasonable in its sole judgment.

Notwithstanding anything else in this Section 7.2, TENANT may not exercise the Right of First Offer set forth in this Section 7.2 if, at the time of such exercise, TENANT is in default under this Lease beyond any applicable notice and cure periods provided for herein. If TENANT provides a TENANT Offer pursuant to this Section 7.2, MAC accepts the TENANT Offer, TENANT thereafter defaults under the terms of the TENANT Offer, and MAC terminates the TENANT Offer, the Right of First Offer set forth in this Section 7.2 shall also terminate and be of no further force or effect throughout the remainder of the term of this Lease

7.3 No Commitment of Future Space

MAC has no obligation to provide the Leased Properties or any other MAC or Airport property to TENANT beyond the term of this Agreement.

7.4 Redelivery

At the time of redelivery of the Leased Properties, the TENANT shall, at its own expense

- (i) Close all wells drilled, opened, installed, or utilized on Leased Properties by TENANT or Related Entities
- (ii) Remove all tanks placed, installed, or utilized on Leased Properties by TENANT or Related Entities
- (iii) Correct all environmental problems that TENANT or Related Entities created or aggravated on the Leased Properties, and
- (iv) Make any other changes to the Leased Properties required by federal, state, or local law.

At the time of termination of this Agreement, whether on account of default or by lapse of time, if TENANT shall have paid all taxes, assessments, rent and other charges by it payable under the terms of this Agreement, and shall have kept and performed all the terms and conditions of this Agreement, TENANT shall have the privilege of removing from the Leased Properties all buildings or property thereof belonging to TENANT, provided TENANT does so within ninety (90) days after the termination of this Agreement. If such buildings or property are not so removed within such ninety (90) day period, title hereto upon the expiration of such ninety (90) day period shall vest in MAC without further act or conveyances; provided, however, that if following commencement of removal or notice of intention to remove, TENANT shall demonstrate to MAC that for reasons beyond TENANT's control such removal cannot be completed within such ninety (90) day period,

MAC shall allow TENANT the reasonable extension of time for such removal.

TENANT covenants that at the termination of this Agreement by lapse of time or otherwise, it shall remove its personal property and vacate and surrender possession of the Leased Properties to MAC. Any equipment, trade fixtures or furniture installed by TENANT, including but not limited to moveable partitions, shelving units, projection screens and audio-video equipment attached to the Leased Properties by TENANT, shall remain the property of TENANT. TENANT shall have the right to remove the above equipment or fixtures at the expiration or termination of this Agreement or any extension thereof, even though said equipment or fixtures are attached to the Leased Properties. Any personal property subject to this Section must be removed within ninety (90) days of the Agreement termination or it becomes property of MAC.

8. DUTIES OF MAC

Subject to the provisions of Section 20, MAC covenants that TENANT shall have the quiet enjoyment and full possession of the Leased Properties during the full term of this Agreement, and that the Leased Properties shall have public access and access to all available public utilities. The parties shall, during the plan review process described in Section 5.2.7, agree to access routes for TENANT before and during construction and for TENANT and the public after construction.

MAC has the right to enter the Leased Properties for the purposes of making repairs or improvements to any adjoining premises or to the Airport and to install, repair, maintain and construct through the Leased Properties such pipes, wires and other similar items, including sanitary sewer and water main, as MAC deems necessary or desirable for the operation of the Airport. In doing so, MAC shall use reasonable diligence to minimize disruptions to TENANT's use and enjoyment of the Leased Properties, work with TENANT on reasonable timing and location of installations, and shall reasonably repair any damage caused by such entry.

9. DUTIES OF TENANT

9.1 Access

TENANT shall allow access to the Leased Properties by MAC or its authorized representatives, at any reasonable time during the life of this Agreement or any extensions or periods of holding over for any purpose within the scope of this Agreement.

9.2 Compliance with Law

In its development, construction, and operation of the Leased Properties, TENANT shall comply with all applicable federal, state and local laws, including those of MAC and the FAA.

9.3 Assignment/Sublease

See Section 5.1.4. This Agreement is binding on all Related Entities.

9.4 Utilities

TENANT shall, at its expense, pay for all utilities used by TENANT on the Leased Properties.

9.5 Maintenance

TENANT at its own cost and expense shall take good care of the Leased Properties and the buildings, structures, or Improvements at any time located thereon and shall keep and maintain them in good order and repair and in a clean and neat condition. TENANT shall not suffer or permit any waste or nuisance on the Leased Properties or anything thereon that shall interfere with the rights of other tenants or MAC in connection with the use of portions of MAC property not leased to TENANT.

TENANT shall provide all maintenance, including snow removal, for the Leased Properties and the buildings, structures or Improvements thereon. If TENANT fails to do such maintenance or fails to do it in a manner satisfactory to MAC, MAC reserves the right to do the maintenance and charge TENANT the cost plus a twelve percent (12%) administrative fee.

10. BUILDING CONSTRUCTION, REPAIRS, SECURITY FOR LIENS

Whenever and as often as TENANT shall erect or shall cause to have erected any building, structure, Improvement, grading or re-grading on the Leased Properties and whenever and as often as it shall repair, rebuild, alter, enlarge or extend any building, structure, Improvement, grading or regrading which may from time to time be on the Leased Properties, or cause the same to be done, TENANT shall in each instance:

10.1 Construction Over \$25,000

Before commencing any erection, rebuilding, enlargement, extension, grading, regrading, or any other Improvement on the Leased Properties costing between twenty-five thousand dollars (\$25,000.00) and one-hundred thousand dollars (\$100,000.00), TENANT must notify MAC of such Improvement prior to commencement of the construction of such Improvement. Upon receipt of such notification, MAC has ten (10) business days to notify TENANT about any concerns MAC may have regarding the Improvement. If MAC exercises this option, MAC may require TENANT to comply with the approval process required

for Improvements over one-hundred thousand dollars (\$100,000.00). MAC also reserves the right to require TENANT to furnish a bond or other security.

10.2 Construction Over \$100,000

Before commencing any erection, rebuilding, enlargement, extension, grading, regrading, or any other Improvement on the Leased Properties costing over one-hundred thousand dollars (\$100,000.00), TENANT must furnish to MAC for written approval the plans and specifications for such work and an estimate from a responsible contractor showing the expense of completing the work, and unless waived by MAC, a bond or other security in amount, form and with surety satisfactory to MAC, conditioned for the commencement and completion and payment for such work, and against loss or damage by reason of mechanics liens, and an insurance policy from an insurance company approved in writing by MAC protecting MAC from all liability to persons or property for damages arising out of the contemplated work. MAC shall within sixty (60) days after receipt thereof approve or disapprove the plans and specifications and notify TENANT with respect to the bond or security required, provided that such written approval shall not be unreasonably withheld.

10.3 Requirements for All Construction

For all construction projects on the Leased Properties, regardless of the dollar value, TENANT shall:

- 10.3.1 Procure from the necessary authority any building permits that may be required;
- 10.3.2 Do or cause the work to be done in a good and professional manner and to be completed within a reasonable time and in conformity with such building codes, zoning ordinances, or regulations and orders of any lawful authority applicable to the Leased Properties;
- 10.3.3 Keep the Leased Properties and every building, structure and Improvements on the Leased Properties free and clear from all liens for labor performed and materials furnished therefor;
- 10.3.4 Defend, at its own cost and expense, each and every such lien asserted or filed against the land, or any part thereof, or against any building, structure or Improvement thereon, and pay each and every judgment made or given against the land, or building or any part thereof; and
- 10.3.5 To the extent provided by law, indemnify and save harmless MAC from each and every claim, demand, action, and cause of action, arising out of or in connection with any act or omission of TENANT or of any agent, employee, or contractor of TENANT in or about the removal, erection

alteration, enlargement, or extension of any building, structure or Improvement on the Leased Properties, arising out of or connected with the assertion or filing of any such lien on the land or against any building, structure or Improvements thereon. As set forth in this Section, indemnification shall not be limited by statutory limits provided for by Minn. Stat. § 3.736, subd. 4, or as such statute may be amended or modified from time to time.

11. INSURANCE AND INDEMNIFICATION

11.1 Indemnification

To the extent provided by law, TENANT hereby indemnifies and agrees to defend, protect, and hold harmless Indemnities from and against any and all losses, liabilities, fines, lawsuits, charges, damages, injuries, penalties, response costs, claims, demands and actions of any and every kind and nature whatsoever paid, incurred or asserted against, or threatened to be asserted against, any Indemnities, by reason of any and all of TENANT's operations hereunder or for personal injury and death and property damage arising therefrom and does hereby agree to assume all the risk in the operation of its business hereunder and shall be responsible and answerable in damages for any and all accidents or injuries to persons whether or not said persons are owners, managers, or employees of TENANT, or property, except when solely caused by the negligence or intentional act of one or more of the Indemnities. Such indemnification, and TENANT's obligations hereunder, shall survive cancellation, termination or expiration of the term of this Agreement. As set forth in this Section, indemnification shall be limited by statutory limits provided for by Minn. Stat. § 3.736, or as such statute may be amended or modified from time to time.

11.2 Insurance

TENANT shall either (i) maintain insurance, with underwriters satisfactory to MAC, a standard term policy or policies of insurance in amounts as hereinafter set out protecting both the TENANT and MAC against public liability and property damage, including products liability, or (ii) provide self-insurance providing equivalent protection. Such policy or policies shall be in the amount of statutory limits provided for by Minn. Stat. § 466.04 or Minn. Stat. § 3.736, or as such statute may be amended or modified from time to time, which currently requires one million five hundred thousand dollars (\$1,500,000) per accident or occurrence or five hundred thousand dollars (\$500,000) per person. Such policy or policies shall provide for a minimum of ten (10) days written notice of cancellation. It is understood that the specified amounts of insurance in no way limit the liability of TENANT to MAC. TENANT shall furnish a certificate from the insurance carrier or carriers showing such insurance to be in full force and effect during the term of this Agreement, or shall deposit copies of the policies, which give this coverage with MAC, or provide evidence of self-insurance satisfactory to MAC.

All such policies shall name MAC as additional insured.

If TENANT allows other contractors, licensees, agents, subtenants, athletic associations, or vendors to utilize the Leased Properties, TENANT shall endeavor to verify policies in place in the amount of the following insurance from each which name MAC as an additional insured in such policies. The insurance below does not limit the liability of contractors, licensees, agents, subtenants, athletic associations, or vendors of TENANT to MAC.

- (i) Worker's Compensation to statutory limits. The policy or policies shall contain a waiver of subrogation against MAC by endorsement or terms and conditions of the policy or policies.
- (ii) Employer's Liability with limits of at least \$100,000 each accident bodily injury by accident, \$500,000 policy limit bodily injury by disease, and \$100,000 each employee bodily injury by disease.
- (iii) Comprehensive General Liability on an occurrence basis with a combined single limit of \$2,000,000 and a general aggregate of \$5,000,000. The policy or policies shall name MAC as an additional insured and be primary and non-contributory by endorsement or terms and conditions to the policy or policies.
- (iv) Commercial Automobile Liability/Inland Marine, for owned, non-owned, hired, leased or rented vehicles or equipment with limits of at least \$1,000,000 single limit. The policy or policies shall name MAC as an additional insured by endorsement or terms and conditions of the policy or policies.
- (v) Property on an all risk basis to the full replacement cost of the property. The policy or policies shall contain a waiver of subrogation against MAC by endorsement or terms and conditions of the policy or policies.

11.3 Fire and Extended Coverage Insurance

If available, TENANT shall procure and keep in force fire and extended coverage insurance upon its leasehold Improvements, to the full insurable value thereof and shall furnish MAC with evidence that such coverage has been procured and is being maintained in full force and effect. Such insurance shall name MAC as an additional insured and proceeds shall be paid over to MAC to apply to the cost of repair or replacement or if there is no repair or replacement such proceeds shall be paid over to MAC and TENANT as their interests may appear.

12. MAC REMEDIES UPON TENANT DEFAULT

MAC shall give TENANT written notice, in reasonable detail, of any default by TENANT in the payment or performance of TENANT'S obligations under this Agreement, and

- (i) If the default is the failure to pay rent and the failure continues for a period of ten (10) business days after receipt by TENANT of such notice, or
- (ii) If the default is the failure to perform any other obligation to be kept or performed by TENANT which can reasonably be cured within thirty (30) days and if the same is not cured within thirty (30) days following receipt by TENANT of such notice, or
- (iii) If the default cannot reasonably be cured within thirty (30) days and TENANT fails to commence cure within thirty (30) days following receipt by TENANT of such notice and thereafter to prosecute cure with reasonable diligence, then MAC shall be entitled to all remedies available at law or equity.

Any waiver or any breach of covenants herein contained to be kept and performed by TENANT shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent MAC from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise upon MAC giving the required notice to TENANT and allowing the applicable period of time to cures such default.

13. DEFAULT BY MAC

If MAC shall default in the performance of any of the terms or provisions of this Agreement, TENANT shall promptly so notify MAC in writing. If MAC shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure, and MAC shall fail to commence to do so within thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default, then in either event TENANT may cure such default and any reasonable and actual expenses paid by TENANT shall be paid by MAC to TENANT within ten (10) days after statement therefore is rendered. This provision in no way limits TENANT'S other remedies for breach under common law or this Agreement.

14. AFFIRMATIVE ACTION

14.1. Nondiscrimination

TENANT, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the properties described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, TENANT will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the List of Pertinent Nondiscrimination Authorities

(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

TENANT, for itself, its personal representatives, successors in interest and assigns and as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land that: (i) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (iii) TENANT will use the Leased Properties in compliance with all other requirements imposed by or pursuant to List of Pertinent Nondiscrimination Authorities (as may be amended).

14.2 List of Pertinent Nondiscrimination Authorities

During the performance of this contract, the TENANT, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (ii) 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (iv) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- (v) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (vi) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (vii) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the

- Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (viii) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
 - (ix) The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - (x) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - (xi) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - (xii) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

14.3 Civil Rights

TENANT and its transferee agree to comply with pertinent statutes, executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision obligates TENANT or its transferee for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; or real property or interest therein; or structures or Improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- (i) The period during which the property is used by the Airport sponsor or any transferee for a purpose for which Federal assistance is extended, or

for another purpose involving the provision of similar services or benefits,
or

- (ii) The period during which the Airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

15. ENVIRONMENTAL RESPONSIBILITIES

15.1 Indemnification

To the extent provided by law, TENANT hereby indemnifies and agrees to defend, protect, and hold harmless Indemnities from and against any and all losses, liabilities, fines, charges, damages, injuries, penalties, response costs, or claims of any and every kind whatsoever paid, incurred or asserted against, or threatened to be asserted against, any Indemnities, in any way relating to or regarding, directly or indirectly, Environmentally Regulated Substances or Environmental Laws, including all Environmental Claims, that arise from or pertain to TENANT and/or Related Entities' operation of the Leased Properties, except when solely caused by the negligence or intentional act of one or more of the Indemnities; such matters will include without limitation: (i) all consequential damages, (ii) the costs of any investigation, study, removal, response or remedial action, as well as the preparation or implementation of any monitoring, closure or other required plan or response action, and (iii) all reasonable costs and expenses incurred by any Indemnities in connection with such matters including, but not limited to, reasonable fees for professional services or firefighting or pollution control equipment related to spills.

TENANT further agrees to defend, protect, indemnify and hold harmless any Indemnities for any such matters arising out of or relating to Sections 16.2 and 16.4, except for such matters that are solely caused by the negligence or intentional act of one or more of the Indemnities. Such indemnification, and TENANT's obligations hereunder, shall survive cancellation, termination, or expiration of the term of this Agreement. As set forth in this Section, indemnification shall not be limited by statutory limits provided for by Minn. Stat. § 3.736, subd. 4, or as such statute may be amended or modified from time to time.

15.2 Compliance with Environmental Laws

TENANT and Related Entities shall keep and maintain and shall conduct the operations on the Leased Properties in full compliance with all Environmental Laws including maintaining and operating any storage tanks installed under this Agreement. TENANT will further ensure that its employees, agents, contractors,

subcontractors, and any other persons conducting any activities on the Leased Properties to do so in full compliance with all Environmental Laws. By virtue of its operational control of the Leased Properties, TENANT shall be responsible for obtaining all necessary government permits or other approvals required by Environmental Laws in its name. TENANT accepts responsibility for any spills caused by or resulting from operation of the Leased Properties.

15.3 Environmental Operating Conditions

Any materials/waste (hazardous or otherwise) generated from TENANT's use and occupancy of the Leased Premises are the property of TENANT and must be removed by TENANT. Waste disposal must follow all county, state and federal regulations. MAC is not the owner, generator or the party responsible for removal/disposal of this waste/material.

TENANT shall also notify MAC of any spills or dumping, regardless of the amount, occurring on Airport property to which TENANT has knowledge. If MAC incurs costs related to a spill or other environmental expense related to TENANT's operations on the Airport property, MAC will notify TENANT as soon as possible.

TENANT shall not conduct any vehicle maintenance outside and shall not store waste materials outside. TENANT shall ensure its dumpsters are covered at all times except when being filled with waste and shall prevent its equipment from having releases to stormwater.

TENANT is prohibited from having any discharges of wash waters with detergents or Environmentally Regulated Substances to stormwater. For products containing Environmentally Regulated Substances (e.g. stain removal chemicals, detergents, etc.) that may be exposed to stormwater as part of TENANT'S operation on Airport Property, TENANT use shall be limited to those products which are approved by the Minnesota Pollution Control Agency (MPCA).

15.4 Notification

TENANT shall immediately notify MAC in writing of any matter that might give rise to an Environmental Claim, or if TENANT obtains knowledge of any release, threatened release, discharge, disposal or emission of any Environmentally Regulated Substance in, on, under or around the Leased Properties which is not in full and complete compliance with all Environmental Laws. Consistent with Minn. Stat. §115.061, it is the responsibility of TENANT to notify the Minnesota Department of Public Safety Duty Officer service immediately (recommended no longer than one hour) of a discharge of any substance or material under its control that may cause pollution to waters of the state. Consistent with 40 CFR Chapter 1, Part 110, it is the responsibility of a TENANT to report to National Response Center any spill of a petroleum.

15.5 Right to Take Action

MAC shall have the right, but not the obligation or duty, to join or participate in, including if it so elects as a formal party, any legal or administrative or equitable proceedings or actions initiated by any person or entity in connection with any Environmentally Regulated Substance, Environmental Law, Environmental Claim pertaining to TENANT's operation at the Leased Properties, or if TENANT is not fulfilling its obligations under Section 16.1.

15.6 Right to Investigate

MAC shall have the right, but not the obligation or duty, anytime from and after the date of this Agreement, to investigate, study and test to determine whether Environmentally Regulated Substances are located in, on, or under the Leased Properties, or were emitted or released therefrom, which are not in compliance with Environmental Laws. Upon the reasonable request of MAC, TENANT shall provide a list of any and all Environmentally Regulated Substances used in, on or under the Leased Properties, certified as true and correct, and specifying how such Environmentally Regulated Substances are used, stored, treated or disposed.

16. **TANKS**

TENANT, or its assignees, accepts title and ownership to any and all tanks that TENANT or Related Entities may install on the Leased Properties at any time during the term of this Agreement or during any period of holding over.

TENANT agrees to use only above ground tanks on the Leased Properties. Installation of any tanks on the Leased Properties is subject to the prior written approval of MAC, such approval shall not be unreasonably withheld. Both TENANT, or Related Entities, and MAC acknowledge and agree that any tanks placed, installed, maintained, or utilized on the Leased Properties during the term of this Agreement continue to remain under the ownership and control of TENANT until such tanks are removed from the Leased Properties by TENANT. This provision survives the expiration or termination of this Agreement.

17. **CONDITION OF TITLE AND ENCUMBRANCES**

17.1 Condition of Title

MAC represents that it owns and has the right to lease the Leased Properties to TENANT.

17.2 Future Mortgages, Liens, and Encumbrances

MAC represents and warrants to TENANT that it will not allow any voluntary or involuntary mortgage, lien or encumbrance to exist on, be placed on, or created against the Leased Properties without the prior written consent of the TENANT.

TENANT represents and warrants to MAC that it will not allow any voluntary or involuntary mortgage, lien or encumbrance to exist on, be placed on, or created against the Leased Properties without the prior written consent of the MAC.

18. CONSENT OF MAC

Where this Agreement refers to “consent of MAC,” it means MAC’s Executive Director or designated representative.

19. GENERAL PROVISIONS.

19.1 Headings

The Section headings are for convenience only, and are not to be considered when interpreting this Agreement.

19.2 Waiver

The waiver or breach by MAC or TENANT of any term of this Agreement shall not be deemed waiver of any subsequent breach of the same term or any other term of this Agreement.

19.3 Relationship of Parties

It is understood and agreed that nothing herein contained is intended or shall be construed as in anyway creating or establishing the relationship of co-partners between the parties hereto, or as constituting the TENANT as the agent, representative or employee of MAC for any purpose or in any manner whatsoever. The TENANT is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

19.4 Severability

If any part of this Agreement shall be held invalid, this does not affect the validity of the remaining parts of this Agreement, provided that such invalidity does not materially prejudice either MAC or TENANT under the remaining parts of this Agreement.

19.5 Minnesota Law

This Agreement is governed by Minnesota law.

19.6 Taxes and Other Charges

TENANT shall pay all applicable taxes, assessments, license fees, or other charges that may be levied or assessed during the term of this Agreement upon or against the Leased Properties, any Improvements or equipment on the Leased Properties, or on account of the business transacted on or from the Leased Properties, without deduction or set-off against the rent to be paid under this Agreement.

19.7 Entire Agreement

This Agreement constitutes the entire agreement between the parties. This Agreement may only be modified if in writing and executed by both parties.

20. **FAA REQUIRED LANGUAGE**

MAC, for themselves, their heirs, successors or assigns, do hereby reserve for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface to the premises herein conveyed. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

As a condition of this conveyance the TENANT, for themselves, their heirs, successors and assigns, do hereby agree to prohibit the erection of structures or growth of natural objects that would constitute an obstruction to air navigation as defined in FAR Part 77.

As a further condition of this conveyance, TENANT, for themselves, their heirs, successors, and assigns, do hereby further agree that they will not use or permit or suffer use of the land first above described in such a manner as to create electrical interference with radio communication between the installation upon the aforesaid airport and aircraft or as to make it difficult for pilots to distinguish between the airport lights and others or as to result in glare in the eyes of flyers using the said airport, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, takeoff, or maneuvering of aircraft.

As a further condition of this conveyance, TENANT, for themselves, their heirs, successors or assigns, do hereby further agree that they will not use or permit or suffer use of the land first above described in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.

21. **NOTICES**

All notices, or communications between MAC and TENANT shall be deemed sufficiently given or rendered if in writing and delivered to either party personally or sent by registered or certified mail addressed as follows or to such other address as one party

notifies the other party as its official address. Notice is deemed given when placed in the mail or hand delivered.

MAC: Metropolitan Airports Commission
Director – CMAA
6040 – 28th Avenue South
Minneapolis, MN 55450

TENANT: Attention: Executive Director
Minnesota Amateur Sports Commission
1700 105th Avenue N.E.
Blaine, Minnesota 55449-4500

IN WITNESS WHEREOF, the parties have set their hands on the date(s) indicated below intending to be bound thereby.

MAC:
Metropolitan Airports Commission

By _____

Title _____

Date _____

TENANT:
Minnesota Amateur Sports Commission

By _____

Title _____

Date _____

Approved as to form and execution
OFFICE OF THE ATTORNEY GENERAL

EXHIBIT A
Legal Description of Leased Property I

EXHIBIT B
Diagram of Leased Property I

EXHIBIT C
Drawing of RPZ and Runway Zone A

EXHIBIT D
Depreciation Schedule

<u>Item</u>	<u>Years</u>
Permanent buildings or structures	30
Temporary buildings / sheds	15
Fences	20
Tree plantings	30
Hedges	10
Sidewalks	20
Roads and parking lots	20
Electric power lines	25
Electric power systems	20
Air conditioning systems (but not window type air conditioner units)	20
Heating systems	20
Gas and water lines	25
Drainage lines	25
Irrigation	15
Grading	15
Modifications in existing buildings or structures	Time to be agreed Upon by MAC and TENANT pursuant to Section 5.8

EXHIBIT E
Diagram of Leased Property II

EXHIBIT F
Drawing of Corner Parcel and Commercial Parcel