

CITY OF CHARLOTTE
AIRLINE USE AND LEASE AGREEMENT

July 1, 2016 – June 30, 2026

AIRLINE:

<Airline Legal Name>

CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT

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This AIRLINE USE AND LEASE AGREEMENT (“Agreement”) is made by and between the **City of Charlotte** (the “City”), a municipal corporation of the State of North Carolina, and **<Airline Legal Name>** (“Airline”), a corporation organized and existing under the laws of _____ and authorized to do business in the State of North Carolina <Company Type and State>.

RECITALS

The City owns and operates the Charlotte Douglas International Airport (the “Airport”), and has the power and authority to grant to Airline rights and privileges concerning the occupancy and use of the Airport.

Airline desires to occupy or use certain premises and facilities on the Airport, and to acquire from the City certain rights and privileges in connection with its use of the Airport.

In consideration of the terms and conditions described below, the sufficiency of which is hereby acknowledged, the City and Airline agree as follows:

Article 1

DEFINITIONS AND EXHIBITS

1.1 Basic Data.

Each reference in this Agreement to any of the following subjects shall incorporate the information specified below:

- City: City of Charlotte, North Carolina.
- City’s Overnight Delivery and Street Address: 5601 Wilkinson Boulevard, Charlotte, NC 28208.
- City’s Post Office and Payment Address: City of Charlotte, P.O. Box 63091, Charlotte, NC 28263.
- Airline: <Airline Legal Name>
- Airline’s Overnight Delivery and Street Address: <Address>
- Agreement: This Airline Use and Lease Agreement, together with each Premises Notice issued by the City to Airline in accordance with Section 2.3.1.
- Effective Date: July 1, 2016.
- Term: The period of time beginning on the Effective Date and ending on the Expiration Date, unless earlier terminated as provided in this Agreement.
- Expiration Date: June 30, 2026.

Permitted Uses: As provided in Article 3.

Premises: (a) Exclusive Use Premises; (b) Preferential Use Premises; (c) Joint Use Premises; and (d) Common Use Premises, all as further described in Article 2; provided, however, that in the case of Common Use Premises and Joint Use Premises, such areas will only constitute “Premises” during the period of time for which Airline has the right to use such areas. Premises shall not include any areas leased by Airline in the Terminal Complex or otherwise on the Airport pursuant to an instrument, license, permit, or agreement other than this Agreement.

Security Deposit: As provided in Article 20.

1.2 Additional Defined Terms.

The following terms shall have the following meanings wherever used in this Agreement:

“1985 Lease” means the 1985 Amended and Restated Airport Agreement and Lease as most recently amended effective as of July 1, 2012.

“AAAC” means the Airline Airport Affairs Committee established by the Signatory Airlines operating at the Airport.

“Additional Projects” means Capital Improvement Projects that are not Approved Projects or Exempt Projects.

“Additional Termination Damages” means, collectively, additional damages incurred by the City because of Airline’s default under Section 21.1 as it relates to Airline’s Exclusive Use and Preferential Use Premises, including but not limited to the costs of removing or storing any personal property from the Airline’s Exclusive Use and Preferential Use Premises, the cost of re-letting such Exclusive Use and Preferential Use Premises, and the costs of any necessary renovations or repairs and related expenses therefor, all as further described in Section 21.2.1(c).

“Advance Schedule” means an Air Carrier’s flight schedule submitted in the form required by the City’s Airport Operations Division prior to, or on, the designated due date for participation in the forty-five (45)-day review thereof by such Division pursuant to **Exhibit C**, subject to Airline’s right to amend its Advance Schedule in accordance with Section 4.11.3.

“Affiliate” shall mean a Passenger Carrier providing air service at the Airport that (i)(a) is a parent or subsidiary of a Signatory Airline, or a subsidiary of said Signatory Airline’s parent company, or is under the same parental control as said Signatory Airline; or (b) shares an International Air Transport Association (IATA) flight designator code with said Signatory Airline; or (c) otherwise operates at the Airport under essentially the same trade name as said Signatory Airline and uses essentially the same livery as said Signatory Airline, and (ii) is properly designated as an Affiliate by said Signatory Airline in accordance with Article 6; provided, however, that no Passenger Carrier with annual operating revenues of \$1 billion or more shall be classified as an Affiliate of another such major Passenger Carrier unless either

clause (i)(a) or clause (i)(c) above defines the relationship between such Passenger Carriers at the Airport.

“Affiliate Operating Agreement” means the agreement described in Section 6.1.1, the form of which is attached as **Exhibit I**.

“Air Carrier” means a carrier certificated by the Secretary of the U.S. Department of Transportation as a Passenger Carrier under 49 U.S.C. § 41102 or a Cargo Carrier under 49 U.S.C. § 41103.

“Air Service Incentive Program” means each program made up of air service incentives at the Airport that the City may adopt and implement in order to enhance existing air service or attract new air service to the Airport, each of which shall be consistent with applicable federal requirements and may include, without limitation, rates and charges waivers and marketing support, as further described in Section 10.8.

“Airfield” (which is designated as “Public Aircraft Facilities” or “P.A.F.” under the Revenue Bond Order and shown on Exhibit G attached thereto) means those areas and facilities described in **Exhibit H**.

“Airline Leased Terminal Space” means all space within the Terminal Building that is leased to or used by the Air Carriers operating at the Airport, including the sum of all leased Exclusive Use Premises, Common Use Premises and Joint Use Premises.

“Airport” means the realty and improvements generally known and designated as the “Charlotte Douglas International Airport.” The improvements on the realty consist of the Airfield, ramps and parking aprons, the Terminal Buildings, freight buildings, hangars, vehicle roadways, parking facilities and all other improvements presently existing or hereafter constructed on such realty. The term “Airport” shall also include any adjacent or nearby realty presently owned or hereafter acquired by the City for Airport purposes and all improvements presently existing or hereafter constructed on, located at, or affixed to such realty. A current depiction of the physical layout of the Airport is set forth in **Exhibit A**.

“Airport Fees and Charges” means, for any Fiscal Year, all rents, charges and fees payable by all Signatory Airlines and Affiliates for such Fiscal Year as determined and adjusted pursuant to Article 10.

“Airport Rules and Regulations” means, collectively, all rules, procedures, requirements and regulations currently effective and hereinafter amended, adopted or established by the City, including without limitation the Procedures for Parking and Gate Use, Assignment and Scheduling attached as **Exhibit C**, the City’s advertising policies and guidelines and the City’s “Tenants’ Rules and Regulations”, all of which are incorporated into and made a part of this Agreement, provided that such Airport Rules and Regulations do not conflict with applicable provisions of state or federal law or the provisions of this Agreement.

“Airport Services” means administration, operation and maintenance services provided by the City at the Airport, as further described in **Exhibit H**.

“Airport Services Facilities” or “ASF” means the property, property rights and facilities used by the City to provide the Airport Services, as further described in **Exhibit H**.

“Airport Services Facilities Costs” means the City’s total costs to provide and operate the Airport Services and Airport Services Facilities, including the Capital Expense attributable thereto, as further described in **Exhibit H**.

“Amortization of City Investment” means the sum of the amounts of each City Investment amortized on the basis of the economic life of the asset that is the subject of such City Investment beginning with the first full year following the asset’s placement into service, and including a return on the unamortized portion of each such City Investment calculated using an interest rate set to equal comparable average borrowing costs published in the Bond Buyer Revenue Bond Index on June 30th of the year in which such asset is put in service.

“Ancillary Airfield Revenues” means all amounts that are received by the City from users of the Airfield other than the Signatory Airlines and Affiliates.

“Applicable Laws” means, collectively, all applicable present and future federal, state and local laws, rules, regulations and ordinances, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health, sanitation and safety; (ii) the environment, including without limitation the Environmental Laws; (iii) access for persons with disabilities, including without limitation the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; and (iv) airport security, including without limitation the regulations of the Transportation Security Administration, 49 CFR Parts 1540, 1542, 1544 *et seq.*

“Approved Projects” means, collectively, the Pre-Approved Projects and those items approved by a Majority-in-Interest vote pursuant to Section 7.3.

“Average Minimum Use Level” means the average minimum number of Turns *or* the average minimum number of Seats calculated by the City based on the rolling six-month average of an Air Carrier’s Turns or Seats (as applicable) at all of an Air Carrier’s Preferential Use Gates, as further described in Section 4.4.

“Aviation Director” means the Aviation Director of the Airport or his/her successor, or the person, division, department, bureau, or agency designated by the City to exercise functions equivalent to those now exercised by the Aviation Director or his/her successor.

“Baggage Claim Areas” means the areas located in the Terminal Building where inbound baggage is unloaded and made available for delivery to or claim by arriving passengers.

“Baggage Make-up Areas” means the areas located in the Terminal Building where outbound baggage is sorted for delivery to departing aircraft.

“Capital Equipment Depreciation” means the straight line depreciation for each item of capital equipment during each Fiscal Year, over the useful life of such capital equipment.

“Capital Expense” for any Fiscal Year means the sum of (i) Debt Service and (ii) Amortization of City Investment, each for such Fiscal Year.

“Capital Improvement Project” means an addition or improvement to the Airport’s physical plant or equipment, and the acquisition of land or rights in land for expansion or operation of the Airport (including judgments and awards related to claims for inverse condemnation), or for aviation easements acquired from property owners releasing the City from any claims or liability arising from the flight of aircraft landing at or departing from the Airport.

“Cargo Carrier” means a carrier certificated by the Secretary of the U.S. Department of Transportation as a Cargo Carrier under 49 U.S.C. § 41103.

“City Investment” means the amount invested by the City in Capital Improvement Projects from Airport funds or other City funds net of any PFCs or federal or state grants.

“City-Operated Premises” means areas in the Terminal Building and Concourses other than the Airline Leased Terminal Space and the Concession Premises that are leased to or used by tenants of the Terminal Complex pursuant to agreements other than airline use and lease agreements.

“City-Owned Equipment” means, collectively, those certain fixtures, equipment, systems and improvements owned by the City and located throughout the Airport in furtherance and support of the air transportation business and related operations of Air Carriers at the Airport, including the Airline, including without limitation the PLBs owned by the City and the Shared Use Terminal Equipment.

“Common Use Gates” means the Gates designated by the City in accordance with Article 4 to be used in common by Air Carriers operating at the Airport, and shall not be deemed to include any Preferential Use Gates.

“Common Use Premises” means those areas within the Terminal Complex, including Common Use Gates (including associated Gate Ramps) and Common Use Ticket Counters, that are made available by the City to Airline and to one or more other Air Carriers, subject to Section 2.3.4 and as more fully described in the Premises Notice.

“Common Use Ticket Counters” means the Ticket Counters designated by the Aviation Director to be used in common by Air Carriers operating at the Airport.

“Concession Premises” means areas in the Terminal Building or the Concourses that are leased to, licensed to, or used (with the City’s written consent) by a person or entity to conduct a business at the Airport, and for which such lease, license, or use the City receives rentals, concession fees, or other payments, as the same may be amended from time to time by the City.

“Concourses” means the buildings connected to the Terminal Building and leased to or used by Signatory Airlines and other Air Carriers for enplaning and deplaning passengers, as such buildings presently exist and may hereafter be expanded, modified, constructed, or relocated.

“Concourse A Expansion Project” means the Capital Improvement Project involving the construction of new Gates and associated Terminal Building space and facilities at Concourse A.

“Cost Centers” means those areas of the Airport grouped together for the allocation of Capital Expense, O&M Expenses and Airport Services Facilities Costs to calculate Airport Fees and Charges. The Cost Centers used to calculate Airport Fees and Charges are the Terminal Complex and the Airfield, and are listed on **Exhibit H**, as the same may be amended from time to time by the City.

“Cure Period” means the period of ninety (90) days, commencing on the date of the City’s delivery of the Initial Recapture Notice to the Airline, that the Airline has to cure the Utilization Deficiency described in the Initial Recapture Notice.

“Debt Service” means, collectively, Revenue Bond Debt Service and any other debt service on obligations issued by the City.

“Enplanement” means any passenger boarding an Aircraft, including any such passenger that previously disembarked from another aircraft of the same or a different Air Carrier, or from the same aircraft previously operating under a different flight number.

“Event of Default” means the occurrence of any one or more of the events described in Section 21.1 that shall constitute a breach of, and shall entitle the City to exercise its remedies under, this Agreement.

“Excluded Cost Centers” means revenues and O&M Expenses generated in or allocable to Cost Centers other than the Terminal Complex (which includes the Terminal Building, Ground Transportation and Fueling Sub-Cost Centers), the Airfield and the ASF, as further described in **Exhibit H**.

“Exclusive Use Premises” means any office space, storage area, VIP Lounge, employee break room, baggage service office or other areas of the Terminal Complex designated for Airline’s exclusive use, subject to Section 2.3.2 and as more fully described in the Premises Notice.

“Exempt Projects” means those Capital Improvement Projects described in Section 7.2.

“FAA” means the Federal Aviation Administration or its successor.

“FIS Facility” means the Federal Inspection Services Facility located in the Terminal Building.

“Final Audit” means the annual audit report described in Section 10.5.1.

“Final Recapture Notice” means the notice issued by the City to an Air Carrier pursuant to Section 4.7, stating the City’s election to recapture one or more of the Air Carrier’s Preferential Use Gates and designating the number of Preferential Use Gates that the City intends to recapture.

“Fiscal Year” means a year beginning July 1 and ending June 30, as may be amended or changed by the City from time to time.

“Future Charges” means, collectively, the amounts of all Airport Fees and Charges which, but for termination of the Agreement pursuant to Section 21.2.1(a), would have become due over the remainder of the Agreement, as all further described in Section 21.2.1(b).

“Gate” means an area of the Terminal Building made up of a Holdroom and a portal or stairwell, if any, through which passengers must pass to board or deplane an aircraft.

“Gate Ramp” means the ramp area associated with a Gate.

“Gate Requesting Airline” means a Scheduled Airline seeking to operate at a Preferential Use Gate that is leased to a Signatory Airline, as further described in Section 4.11.

“Holdrooms” means areas associated with Gates for the staging of passengers waiting to board an aircraft at Gates.

“Included Cost Centers” means revenues and O&M Expenses generated in or allocable to the Terminal Complex (which includes the Terminal Building, Ground Transportation and Fueling Sub-Cost Centers), the Airfield and the ASF Cost Centers, as further described in **Exhibit H**.

“Independent Accountant” means a certified public accountant or firm of certified public accountants selected by the City.

“Initial Recapture Notice” means the notice issued by the City to an Air Carrier pursuant to Section 4.7, stating the City’s intention to recapture one or more of Air Carrier’s Preferential Use Gates.

“Inline Baggage Handling System” means all equipment owned, operated and maintained by the City that is associated with the transportation of baggage from Ticket Counters to baggage make-up devices.

“Inline Baggage Handling System Requirement” means the Capital Expense and the O&M Expenses allocable to the Inline Baggage Handling System.

“International Gate” means a Gate that provides passengers deplaning from arriving international aircraft direct access to the FIS Facility.

“Irregular Operation” means an off-schedule arrival or departure of a Scheduled Operation at a particular Gate or any flight that is not a Scheduled Operation at a particular Gate, but needs to operate at that Gate for reasons outside Airline’s control or for other commercially reasonable purposes.

“Joint Use Premises” means the Baggage Claim Areas, Baggage Make-up Areas, Security Checkpoint Areas, and other areas in the Terminal Complex which, pursuant to Article

2 of each airline use and lease agreement, are then leased for joint use to Airline and one or more other Air Carriers, subject to Section 2.3.5 and as more fully described in the Premises Notice.

“Joint Use Formula” means the formula used to allocate the Joint Use Requirement calculated in accordance with Section 10.3.4 among Air Carriers with respect to the Joint Use Premises. For each Fiscal Year, the Joint Use Formula shall allocate twenty percent (20%) of the Joint Use Requirement calculated in accordance with Section 10.3.4 equally among all Air Carriers using such Joint Use Premises, excluding Cargo Carriers and Low Volume Air Carriers, counting the City as one (1) Air Carrier for this purpose, and eighty percent (80%) among all Air Carriers according to the proportion of the total number of annual Enplanements of each such Air Carrier (including the Enplanements of all Affiliates operating at the Airport) as compared to the total number of annual Enplanements of all Air Carriers using the Joint Use Premises during the Fiscal Year in question.

“Landing Fees” means the fees calculated pursuant to Section 10.2.

“Low Volume Air Carrier” means a Non-Signatory Airline with annual Enplanements totaling less than one half of one percent (0.5%) of total annual Enplanements at the Airport.

“Majority-in-Interest” means, for any Fiscal Year, the number of Signatory Airlines that represents either (a) fifty percent (50%) or more in number of all Signatory Airlines that, together, have landed more than fifty percent (50%) of the total landed weight of the Revenue Landings of all Signatory Airlines during the immediately preceding Fiscal Year, or alternatively, (b) forty percent (40%) or more in number of all Signatory Airlines that, together, have landed more than seventy percent (70%) of the total landed weight of the Revenue Landings of all Signatory Airlines during the immediately preceding Fiscal Year.

“Maximum Gross Landed Weight” or “MGLW” means the maximum certificated weight, in thousand pound units, at which each aircraft operated by an Air Carrier is authorized by the FAA to land at the Airport, as certified by the aircraft’s manufacturer and recited in the Air Carrier’s flight manual governing that aircraft type.

“Monthly Activity Report” is the accurate summary report prepared by Airline describing Airline’s operations at the Airport during the month preceding the month in which the summary is submitted to the City, and signed by an authorized representative of Airline certifying the accuracy of the information set forth therein, and submitted by Airline to the City in accordance with Section 10.7.2. A Monthly Activity Report shall also refer to the accurate summary report describing the operations at the Airport by an Affiliate of Airline, as further described in Section 6.1.2.

“Net Remaining Terminal Complex Revenue” means, for any Fiscal Year, the net remaining Terminal Complex Revenues for such Fiscal Year over the sum of O&M Expenses, Airport Services Facilities Costs, Capital Expense and the Revenue Bond Debt Service allocated to the Terminal Complex for such Fiscal Year (as described in Section 10.5.2).

“Non-Signatory Airline” means any Air Carrier that is not a Signatory Airline.

“Operation and Maintenance Expenses” or “O&M Expenses” means, in any Fiscal Year, the costs incurred by the City in operating and maintaining the Airport’s facilities, excluding any expenses incurred by the City for the provision of the Rental Car Facilities and any Capital Expense. O&M Expenses shall also include ASF Cost Center expenses allocated to the Included Cost Center Operation and Maintenance Expenses (as defined in Exhibit H).

“O&M Reserve” means, for any Fiscal Year, an amount equal to thirty-three and one-third percent (33.33%) of the amount budgeted for O&M Expenses by the City in its annual budget for such Fiscal Year.

“Originating Bags” means the total number of bags checked by passengers originating at the Airport.

“Other Leased Premises” means the Concession Premises and the City-Operated Premises.

“Passenger Carrier” means an Air Carrier certificated by the Secretary of the U.S. Department of Transportation under 49 U.S.C. § 41102.

“Passenger Facility Charges” or “PFCs” means charges authorized by 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, as they may be amended from time to time.

“Passenger Loading Bridge” or “PLB” means a passenger loading bridge, and its preconditioned air system(s), ground power supply unit(s) and related equipment, attached to a Concourse at a Gate.

“Period of Use” means, for a Scheduled Operation at a Preferential Use Gate:

(a) For arrivals of aircraft, the Period of Use shall commence thirty (30) minutes prior to the time scheduled for an arrival. The Period of Use shall terminate sixty (60) minutes after the time scheduled for an arrival or upon Airline’s completion of the deplaning process, whichever occurs first.

(b) For departures of aircraft, the Period of Use shall commence sixty (60) minutes prior to the time scheduled for a domestic departure and ninety (90) minutes prior to the time scheduled for an international departure. The Period of Use shall terminate upon the actual departure of the aircraft from the Gate or thirty (30) minutes after the time scheduled for the departure, whichever occurs first; provided, however, that the scheduled departure time shall be extended if the aircraft is being boarded and actively prepared for departure, and in such instances, the extension shall extend only to the completion of the active boarding process.

“PFC Regulations” means, collectively, 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Part 158, as they may be amended from time to time.

“Pre-Approved Projects” means those Capital Improvement Projects approved by the Airline by way of its execution of this Agreement and listed on Exhibit E.

“Preferential Use Gate” means a Gate assigned by the City to the Airline or another Air Carrier as Preferential Use Premises in accordance with Article 4, and shall be deemed to include “Preferential Use International Gate”.

“Preferential Use Gate Utilization Target” means each level of use or other criterion established by the City for each Air Carrier to meet in order to use or continue to use the Preferential Use Gates assigned by the City to such Air Carrier in accordance with Article 4, as each such level of use or other criterion may be changed from time to time by the City.

“Preferential Use International Gate” means an International Gate assigned by the City to the Airline or another Air Carrier as Preferential Use Premises.

“Preferential Use Premises” means those areas designated as such in the Premises Notice that are within the Terminal Complex, including Preferential Use Gates (including associated Gate Ramps) and Preferential Use Ticket Counters, and to which Airline has a higher priority of use over all other Air Carriers, subject to Section 2.3.3 and as more fully described in the Premises Notice.

“Preferential Use Ticket Counter” means the space in the Terminal for the processing of passengers and their baggage, together with associated queuing space, assigned by the Aviation Director to the Airline or another Air Carrier as Preferential Use Premises.

“Premises Notice” means the notice described in Section 2.3.1 and attached as **Exhibit F**.

“Procedures for Parking and Gate Use, Assignment and Scheduling” means the City’s procedures and requirements for parking and Gate use, assignment and scheduling, which are set forth in **Exhibit C**, as the same may be amended from time to time by the City.

“Public Areas” means sidewalks, Concourses, corridors, lobbies, passageways, restrooms, elevators, escalators and other similar space made available by the City from time to time for use by passengers, City employees, Airline employees and agents, other Air Carrier employees and agents and other members of the public, as such areas presently exist or may hereafter be expanded, modified, constructed, or relocated.

“Rentable Terminal Space” means the sum of the total square footage of the Airline Leased Terminal Space plus the total square footage of the Other Leased Premises.

“Rental Car Facilities” means those facilities, as they presently exist and may hereafter be expanded, modified, constructed, or relocated, whether in the Terminal Building or elsewhere, that are now or hereafter used by motor vehicle rental companies and their customers in the conduct of rental businesses at the Airport under agreements with or rights granted by the City.

“Revenue Bond Debt Service” means, for any Fiscal Year, the required amounts payable for such Fiscal Year, under the Revenue Bond Order, into all subaccounts of the Revenue Bond Fund, and any other payment required pursuant to the rate covenant of Section 704 of the Revenue Bond Order.

“Revenue Bond Fund” means the Revenue Bond Fund created under Section 501 of the Revenue Bond Order.

“Revenue Bond Order” means the “BOND ORDER Authorizing and Securing, CITY OF CHARLOTTE, NORTH CAROLINA, AIRPORT REVENUE BONDS Adopted November 18, 1985,” as amended and supplemented from time to time, and each Series Resolution subsequently adopted by the Charlotte City Council authorizing particular Series of Airport Revenue Bonds.

“Revenue Bonds” means bonds, notes, or other obligations issued by the City pursuant to the Revenue Bond Order.

“Revenue Landing” means any aircraft arrival at the Airport for which Airline has received or made a fee or charge, including, without limitation, scheduled trips, charters and other trips for which a fee is received, but excluding local promotional flights. A revenue flight that returns to or lands at the Airport because of mechanical, meteorological, or other precautionary reasons, without landing at another airport, shall not be considered a Revenue Landing.

“Scheduled Airline” means an Air Carrier performing scheduled passenger service operations at the Airport.

“Scheduled Operation” means a Scheduled Airline’s operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication forty-five (45) days prior to the first day of the month in which Airline’s schedule would take effect, and that is also submitted to the City in an Advance Schedule as required under Exhibit C, subject to Airline’s right to amend its Advance Schedule in accordance with Section 4.11.3.

“Seat” means a seat on an aircraft arriving or departing from the Airport other than those seats reserved in the flight deck or aircraft cabin for members of the flight crew.

“Seats Delivered” means the total number of Seats available on aircraft arriving at the Airport that use a Gate.

“Security Checkpoint Area” means an area used for passenger security screening and associated queuing space as designated by the Aviation Director, which area may be changed from time to time by the Aviation Director in his/her sole discretion.

“Shared Use Terminal Equipment” means equipment owned and installed by the City for use in passenger processing, including without limitation, equipment casework, flight information displays (“FIDS”), gate information displays (“GIDS”), boarding gate readers, passenger processing workstations, seating and self-service kiosks (for boarding passes and bag tagging), and other shared use technology (*e.g.*, reservation system portal open to all Air Carriers at the Airport).

“Signatory Airline” means Airline and each other Passenger Carrier that (a) had at least four hundred (400) daily Seats Delivered at the Airport on an average annual basis for the twelve

(12) months immediately preceding the Effective Date or commits to have Scheduled Operations commencing no more than one hundred eighty (180) days after the Effective Date for such Passenger Carrier that would yield at least four hundred (400) daily Seats Delivered at the Airport on an average annual basis, and (b) has executed an airline use and lease agreement with the City substantially similar to this Agreement. An Affiliate of a Signatory Airline shall not be a Signatory Airline.

“Space Requesting Airline” means an Air Carrier seeking to commence or expand Scheduled Operations at the Airport or a Scheduled Airline without adequate access to the Terminal Complex for its operations.

“Terminal Building” means those areas and facilities described in **Exhibit H**.

“Terminal Building Charges” means the charges calculated pursuant to Section 10.3.

“Terminal Complex” (which is designated as “Terminal Complex” under the Revenue Bond Order and shown on Exhibit H attached thereto) means those areas and facilities described in **Exhibit H**.

“Terminal Complex Revenues” means, for any Fiscal Year, the sum of Terminal Building Charges calculated in accordance with Section 10.3 for such Fiscal Year, and all other Included Cost Center revenues allocable to the Terminal Building, Ground Transportation and Fueling Sub-Cost Centers, as further described in **Exhibit H**. Terminal Complex Revenues specifically exclude all Included Cost Center revenues allocable to the Airfield Cost Center.

“Termination Damages” means, collectively, all unpaid Airport Fees and Charges and damages incurred by the City due to Airline’s default of this Agreement under Section 21.1, including, but not limited to, attorneys’ fees and costs, that the City is entitled to recover from the Airline, as all further described in Section 21.2.1(a).

“Ticket Counters” means those areas in the Terminal Building designated by the Aviation Director for use by Airline for ticketing and processing passengers and their baggage, and similar activities, including ticketing kiosk space and associated queuing space (as calculated to include the area ten (10) linear feet in front of the ticket counters, as may be adjusted from time to time by the City), but excluding curbside check-in positions.

“Turn” means the arrival and departure of an aircraft from a Gate, and may be measured in halves. The movement of an empty aircraft to or from a Gate shall not constitute half a Turn.

“Utilization Deficiency” means the Airline’s failure to meet one or more applicable Preferential Use Gate Utilization Targets for six (6) consecutive months, as further described in Section 4.7.

“VIP Lounge” means those Exclusive Use Premises used by Airline to provide premium services to its passengers.

1.3 **Exhibits.** The following Exhibits are attached to this Agreement:

- Exhibit A: Physical Layout of the Airport
- Exhibit B: Operation and Maintenance Expenses and Responsibilities
- Exhibit C: Procedures for Parking and Gate Use, Assignment and Scheduling
- Exhibit D: Common Use and Preferential Use Gate Assignments as of Effective Date
- Exhibit E: Pre-Approved Projects
- Exhibit F: Premises Notice
- Exhibit G: Illustrations of Rate Calculations
- Exhibit H: List of Cost Centers (Including Cost Center Map)
- Exhibit I: Form of Affiliate Operating Agreement
- Exhibit J: Form of Non-Affiliate Non-Signatory Operating Agreement
- Exhibit K: Terminal Building Space Descriptions as of Effective Date

Article 2

GRANT OF RIGHTS TO USE AIRPORT

The City grants to Airline the rights of occupancy and use in certain areas located within the Airport during the Term as specifically provided in this Article 2, subject to the terms of this Agreement.

2.1 **Rights to Use Airfield.** The City grants to Airline a nonexclusive license to use the Airfield, in common with others, for the purposes described in Section 3.4 hereof, subject at all times to the City's exclusive control and management of the Airfield.

2.2 **Rights to Use Public Areas.** The City grants to Airline a nonexclusive license to use the Public Areas within the Terminal Complex, in common with others, subject at all times to the City's exclusive control and management of the Public Areas. The City shall have the right, in its sole and complete discretion, to relocate, change, or discontinue the use of one or more Public Areas from time to time during the Term.

2.3 **Rights to Use Premises.**

2.3.1 **Premises Notice.** On or before the Effective Date, the City will issue to Airline a Premises Notice, attached hereto as **Exhibit F**, that will designate which areas of the Airport, if any, that the City will make available for Airline's use as: (a) Exclusive Use Premises; (b) Preferential Use Premises; (c) Common Use Premises; and (d) Joint Use Premises.

Airline acknowledges and agrees that the Premises Notice will be revised by the City and issued to Airline from time to time during the Term to reflect the reassignment and reallocation of the Premises and rights therein pursuant to this Agreement. The City and Airline agree that, upon issuance by the City, each revised Premises Notice shall be deemed attached to and incorporated into this Agreement as **Exhibit F**, and shall supersede and replace the last issued Premises Notice deemed attached to and incorporated into this Agreement as **Exhibit F** without the need for a written amendment of the Agreement signed by the City and Airline.

2.3.2 **Exclusive Use Premises.** The City grants to Airline, subject to Article 3, Article 4 and Article 5 of this Agreement, the exclusive right to use the Exclusive Use Premises identified in the Premises Notice.

2.3.3 **Preferential Use Premises.** The City grants to Airline, subject to Article 3, Article 4 and Article 5 of this Agreement, the right to use, on a preferential use basis, the Preferential Use Premises identified in the Premises Notice.

2.3.4 **Common Use Premises.** The City grants to Airline, subject to Article 3, Article 4 and Article 5 of this Agreement, the right to use, on a common use basis, the Common Use Premises identified in the Premises Notice; provided, however, that City shall at all times have exclusive control and management of the Common Use Premises.

2.3.5 **Joint Use Premises.** The City grants to Airline, subject to Article 3, Article 4 and Article 5 of this Agreement, the right to use, on a joint use basis, the Joint Use Premises identified in the Premises Notice; provided, however, that the City shall at all times have exclusive control and management of the Joint Use Premises, and shall have the right to revise Airline's right to use such Joint Use Premises by sending to Airline a revised Premises Notice if the City decides to decommission or use all or a portion of the Joint Use Premises for other purposes.

2.3.6 **Condition of Premises.** Except as otherwise expressly provided in this Agreement, including without limitation in **Exhibit B** and **Exhibit H**, Airline specifically acknowledges and agrees that the City is permitting Airline's use of the Premises on an "as is with all faults" basis, and that Airline is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City, as to any matters concerning the Premises.

Article 3

USE OF AIRPORT

3.1 Airline Rights, Privileges, Limitations and Prohibitions on Use.

Subject to the terms of this Agreement, Airline shall have the right to conduct its air transportation business at the Airport and to perform all operations and functions in connection with the conduct and operation of such business at the Airport. Airline shall not use the Premises, and shall not cause or permit its employees, contractors, vendors, suppliers, consultants, agents (including without limitation Affiliates of Airline), licensees, or invitees to use the Premises, for any purpose other than as specified in this Agreement.

3.2 Terminal Complex.

Airline's use of the Terminal Complex shall be limited to the following activities:

3.2.1 Airline's operation of an air transportation business for the carriage and movement of persons, property, baggage, cargo, express packages and mail by means of aircraft, including but not limited to the following categories of flights: revenue, training, test, inspection, emergency, charter and sightseeing.

3.2.2 Airline's loading and unloading of persons, property, baggage, cargo, and express packages and mail at the Terminal Complex by such motor vehicles or other means of conveyance as Airline may require in the operation of an air transportation business; provided that Airline may designate the particular carrier or carriers to transport Airline's employees, passengers, and their luggage if such transportation is provided at the expense of Airline; and provided, further, that Airline shall not operate commercial ground transportation for the general public. If such transportation is not provided at Airline's expense, the City may charge operators of vehicles carrying passengers for hire reasonable fees for the privilege of entering upon the Airport, using the streets, highways and public roads within the Airport, soliciting passengers upon the Airport, and otherwise operating on the Airport.

3.2.3 Airline's hiring, employment, and training of personnel in the current or future employ of Airline, and training of Airline's contractors.

3.2.4 Airline's use, alone or with other Air Carriers, for any and all purposes in connection with or incidental to the operation of an air transportation business, including: the handling of reservations; the handling, ticketing and billing of passengers; the operation of break rooms for Airline's employees only and, to the extent permitted by law, the serving of food and beverages in such employee break rooms; and the operation of one or more VIP Lounges, passenger clubs and lounge rooms, and, to the extent permitted by law, the serving of food and beverages in such VIP Lounges, passenger clubs and lounge rooms.

3.2.5 Airline's installation and operation, at Airline's expense, of static or digital signs identifying the name of Airline, and directional signs guiding passengers as needed, all of which shall be substantially uniform in size, type, and location with those of other Air Carriers, and the number, type, size, design and location of which shall be consistent with the City's requirements and subject to the City's approval in its sole discretion.

3.2.6 Airline acknowledges and agrees that all passenger terminal facilities and amenities related thereto shall be located within the Terminal Complex, and that no passenger terminal functions shall be conducted elsewhere on the Airport, except for Part 135 air charter operations that may be conducted by Air Carriers from the Airport's General Aviation aprons and terminals. The term "passenger terminal functions" as used in this Section 3.2.6 includes the reception, ticketing, loading, unloading, collection, or transfer of all persons and their baggage being transported by air, or by ground transport incidental to such transportation. The term specifically includes, without limitation, persons and their baggage being transported by Air Carriers and, except as hereinafter provided, all other aircraft operators, including operators of corporate and private aircraft. Notwithstanding the foregoing, the City reserves the

right to permit fixed-base operators to operate passenger lounges and facilities within facilities leased by such operators on an exclusive use basis to accommodate passengers and baggage being transported on private Air Carrier charter and corporate aircraft.

3.3 Gates and Gate Ramps.

Subject to Article 4 and Article 5 and **Exhibit C** of this Agreement and the Airport Rules and Regulations, Airline's use of Gates and Gate Ramps shall be limited to:

3.3.1 Airline's ticketing, boarding, deplaning, and billing of passengers at the Gate; use of the Gates; and use of the PLB and Gate Ramp during Airline's use of such Gate.

3.3.2 Airline's operational staging of equipment for fueling, servicing, loading, unloading, and line maintenance of aircraft that can be completed during Airline's use of such Gate and Gate Ramp, provided, however, that

(a) Airline may park or store its ground service equipment on a Gate Ramp at its Preferential Use Gate, subject to Section 4.11 and Section 5.2;

(b) Nothing in this Section 3.3.2 shall be implied or construed to grant to Airline the right to store or park equipment on a Gate Ramp at a Common Use Gate other than as required for the regular servicing of aircraft parked at such Gate during Airline's use of such Common Use Gate; and

(c) In addition to the regular line maintenance permitted under Section 3.3.2(b), at the City's sole discretion and so long as it does not interfere with another Air Carrier's operations, the City may permit Airline to perform emergency line maintenance of aircraft on a Gate Ramp at a Common Use Gate.

3.3.3 Airline's loading and unloading of any persons, property, baggage, express packages and mail, and carriage and transport of all of the aforesaid, in properly designated facilities by such motor vehicles or other means of conveyance as Airline may reasonably require in the operation of an air transportation business, all in accordance with Section 3.2.2.

3.3.4 Airline's installation, maintenance and operation of its aircrafts' air-conditioning equipment, auxiliary power, start-up and miscellaneous support equipment as reasonably necessary for Airline's operation of an air transportation business and not otherwise provided by the City. Airline shall promptly remove any such equipment that is not reasonably necessary for Airline's operation of an air transportation business; provided, however, that the Airline shall limit the servicing activities described in this Section 3.3.4 to the Gate Ramp.

3.3.5 Airline may complete engine defrosting activities at or near the Gates or Gate Ramps. No de-icing activities and no aircraft surface defrosting activities shall be conducted at or near the Gates or Gate Ramps. Airline shall be required to remove its aircraft from the Gate Ramp for aircraft surface defrosting activities, and for all aircraft de-icing services to be provided to the Airline exclusively by the City as further described in Section 9.1.2.

3.3.6 Airline's provision, by its employees or others for whom Airline is responsible, to Airline's aircraft on Airline's Gate Ramp (including each of Airline's Affiliates on such Gate Ramp) with supplies and services, including food and beverages and ground handling services required by Airline; provided, however, that Airline shall have the right to provide its own supplies and services, or to have such supplies and services provided by its wholly-owned or majority-owned subsidiary or by a third party (including one of the Signatory Airlines). Airline may contract with another Signatory Airline or with one of Airline's Affiliates for the provision of supplies or services for Airline that Airline itself is permitted to provide under this Agreement without Airline entering into one or more additional agreements with the City, and without the Signatory Airline providing the supplies and services to Airline paying the fees to the City that would otherwise be required by City Code. Additionally, Airline may contract with other third parties for the provision of supplies or services for Airline that Airline itself is permitted to provide under this Agreement; provided, however, that Airline shall ensure that any such third party providing such supplies or services for Airline shall first (a) obtain a "Commercial Use Permit" or other type of written contract issued by the City authorizing the non-Signatory Airline third party to conduct the activities or provide the services to Airline, and (b) provide evidence of insurance required by the City, and (c) obtain all required security media in accordance with the Airport Rules and Regulations.

3.3.7 Airline's provision, by its employees or others for whom Airline is responsible (including an Affiliate of Airline), to aircraft of a Non-Signatory Airline (other than an Affiliate of Airline) on a Gate Ramp with supplies and services, including food and beverages and ground handling services, required by such Non-Signatory Airline; provided, however, that Airline shall first comply with the requirements described in Sections 3.3.6(a) through (c), above.

3.4 **Airfield.** The Airline's use of the Airfield and related facilities shall be limited to take-off, landing, flying, taxiing, towing, maneuvering, parking, loading and unloading of Airline's aircraft by such motor vehicles, ground service equipment, or other equipment or means of conveyance as Airline may require, subject to the terms of this Agreement.

3.5 **City-Owned Equipment.** The City grants to the Airline a non-exclusive license to use, subject to the City's control and maintenance thereof in accordance with Section 9.1.1, the City-Owned Equipment in the ordinary course of its business at the Airport and otherwise in accordance with this Agreement. The Airline agrees to accept and use the City-Owned Equipment in its "as is" condition, without any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning the City-Owned Equipment, and further agrees to assume all risk of loss, damage and injury arising out of, or alleged to have arisen out of, Airline's use of the City-Owned Equipment.

Article 4

ASSIGNMENT AND USE OF GATES

4.1 No Exclusive Use Gates.

Airline acknowledges that no Gates within the Terminal Building shall be for any Air Carrier's exclusive use. Each Gate within the Terminal Building shall be designated by the City as either a Common Use Gate or a Preferential Use Gate in accordance with the terms of this Article 4. Airline's use of all Gates shall at all times be in compliance with and subject to **Exhibit C**. In the event of any conflict between this Agreement and **Exhibit C**, this Agreement shall control.

4.2 City's Designation of Common Use Gates.

4.2.1 Airline acknowledges that, as of the Effective Date, the City has made its initial designation of the number and locations of Common Use Gates as listed on **Exhibit D**, and has provided Airline with notice of such designation.

4.2.2 All remaining Gates available for use and not designated by the City for use as Common Use Gates under Section 4.2.1 shall be made available by the City to Air Carriers, including Airline, for use as Preferential Use Gates to be allocated and assigned in accordance with Section 4.3.

4.2.3 The City shall have the right, but not the obligation, at any time to convert one or more Common Use Gates into one or more Preferential Use Gates for lease to an Air Carrier if such Air Carrier meets one or more of the applicable Preferential Use Gate Utilization Targets described in Section 4.4 and executes an airline use and lease agreement with the City substantially similar to this Agreement.

4.3 City's Initial Assignment of Preferential Use Gates and Preferential Use Ticket Counters.

Airline acknowledges that, as of the Effective Date, (a) the City has determined the number and locations of Preferential Use Gates and Preferential Use Ticket Counters as listed on **Exhibit D**, (b) the City has issued a Premises Notice to Airline that reflects Airline's Preferential Use Gate and Preferential Use Ticket Counter assignments, and (c) Airline has, by execution of this Agreement, accepted assignment of the Preferential Use Gates and Preferential Use Ticket Counters set forth in said Premises Notice and listed on **Exhibit D**.

4.4 Preferential Use Gate Utilization Targets.

Airline acknowledges that the City has established the following Preferential Use Gate Utilization Targets for each Signatory Airline to meet in order to use and continue using the Preferential Use Gate(s) that the City has assigned to each such Signatory Airline pursuant to Section 4.3. For Preferential Use Gates within Concourses A, B, C and D, there are two Gate Utilization Targets. The "Preferential Use Gate Utilization Target for First Gate in Concourses A-D" applies to the first Preferential Use Gate within Concourses A, B, C and D assigned to

Airline at any given time. The “Preferential Use Gate Utilization Target for Additional Gates in Concourses A-D” applies to any additional Preferential Use Gates within Concourses A, B, C and D assigned to Airline at that time.

(a) The Preferential Use Gate Utilization Target for First Gate in Concourses A-D shall be an Average Minimum Use Level of four (4) daily Turns *or* 500 daily Seats Delivered for such Signatory Airline’s first Preferential Use Gate, if any, on Concourses A, B, C and D.

(b) The Preferential Use Gate Utilization Target for Additional Gates in Concourses A-D shall be an Average Minimum Use Level of five (5) daily Turns *or* 625 daily Seats Delivered at each of the Signatory Airline’s Preferential Use Gates, if any, on Concourses A, B, C and D.

(c) The Preferential Use Gate Utilization Target for Concourse E applies to all Preferential Use Gates within Concourse E assigned to a Signatory Airline at any time, and shall be an Average Minimum Use Level of the greater of five (5) Turns *or* 350 daily Seats Delivered at each of the Signatory Airline’s Preferential Use Gates, if any, on Concourse E.

4.5 City’s Right to Reallocate Preferential Use Gates.

4.5.1 Five (5) years after the Effective Date, the City shall have the one-time right, but not the obligation, after consultation with the AAAC, to reallocate the numbers and locations of Preferential Use Gates assigned to Signatory Airlines to address factors affecting the efficiency of the Airport, the utilization of all Gates at the Airport, fair and open competition among Air Carriers operating at or desiring to operate at the Airport, or the City’s ability to optimize the use of its Airport facilities or enhance competition at the Airport.

4.5.2 Reallocations by the City under this Section 4.5 may result in the reduction of Airline’s Premises or cause Airline to vacate Premises and relocate to other Premises. The reallocation of any Premises shall be accomplished in accordance with a utilization study conducted by the City, which shall take into account the following factors, among others:

(a) Each Signatory Airline’s historical, current and reasonably projected frequency of operations;

(b) Each Signatory Airline’s historical, current and reasonably projected number of enplaning and deplaning passengers;

(c) Each Signatory Airline’s number and use of Preferential Use Gates;

(d) Each Signatory Airline’s square footage of other Preferential Use Premises;

(e) Each Signatory Airline’s operational space adjacencies;

- (f) Each Signatory Airline's specialized fixtures required for its operations;
- (g) The compatibility of each Signatory Airline's operations and workforce with the operations and workforce of any other Signatory Airline that may be assigned to the Preferential Use Gate(s) being reallocated;
- (h) Any Signatory Airline's need for hub connectivity; and
- (i) The need for the City to manage aircraft and passenger activity at the Airport in order to correct an imbalanced use of Airport facilities, or to minimize or reduce congestion in the Terminal Building or at the curbside.

4.5.3 In making any such reallocation, the City shall give Airline, along with other Signatory Airlines, not less than thirty (30) days' advance written notice of the proposed space reallocation and the reasons for the reallocation. Airline shall, during such thirty (30) day period, be entitled to respond to the proposed reallocation in writing, including Airline's description of the operational space in its Premises that Airline desires to surrender to the City as no longer necessary to support Airline's operations at Airline's remaining Preferential Use Gates in the event Airline's number of Preferential Use Gates will be reduced as a result of the proposed reallocation, which operational space Airline shall have the right to surrender to the City as part of such reallocation. The City's final decision shall be in writing, and shall contain the basis therefor, along with the effective date of the reallocation, if any, which effective date shall not be less than sixty (60) days following the date of the City's final written decision.

4.5.4 Airline shall complete its relocation as expeditiously as possible, but in no event later than the effective date of the reallocation stated in the City's final written decision, and shall otherwise comply with the City's requirements and the Airport Rules and Regulations. In implementing such reallocation, the City shall minimize disruptions to Airline's operations and preserve the operational integrity of the Airline's Premises during and after such reallocation. In implementing such reallocation, Airline shall minimize disruptions to other Air Carriers' operations and preserve the operational integrity of the Premises from which Airline is relocating during and after such reallocation.

4.5.5 All moving costs resulting from the relocation of Airline under this Section 4.5 shall be funded by the City, subject to rate recovery under Article 10. With respect to any Airline trade fixture and other movable property, if removal from the existing Premises and reinstallation at Airline's new premises is possible and not unreasonable, Airline shall not be entitled to a new fixture or to new property; Airline shall, however, remove all trade fixtures and its other movable property from its Premises being vacated, whether or not reinstallation is possible.

4.5.6 If Airline's Premises is reduced as a result of the City's reallocation under this Section 4.5, Airline's Terminal Building Charges calculated under Section 10.3 shall be decreased commensurately on a per square foot basis. If Airline's Premises is increased as a result of the City's reallocation under this Section 4.5, Airline shall not be required to pay Terminal Building Charges for any additional square footage in Airline's Premises.

4.5.7 The City shall have the right, but not the obligation, to convert one or more of the Preferential Use Gates reallocated by the City under this Section 4.5 to one or more Common Use Gates.

4.6 City's Right to Designate and Assign Newly-Constructed Gates and Related Facilities and Space.

Unless otherwise agreed, the City shall have the right, in its sole discretion using the factors set forth in Section 4.5.2, to designate and assign the numbers and locations of Gates and related facilities and space constructed in connection with the Concourse A Expansion Project or other Terminal Building expansion projects. Unless otherwise agreed, Airline shall not be required to accept any assignments of newly-constructed Gates or related facilities and space. Initial assignments, if any, of Gates and related facilities and space constructed in connection with the Concourse A Expansion Project are shown in Airline's Premises Notice.

4.7 City's Right to Recapture Underutilized Preferential Use Gates; Airline's Right to Request Recaptured Preferential Use Gates.

4.7.1 If Airline has a Utilization Deficiency, the City may, in its sole discretion and without any obligation to do so, issue an Initial Recapture Notice to Airline.

4.7.2 Upon the City's delivery of the Initial Recapture Notice, Airline shall have a Cure Period. If, during the Cure Period, Airline consistently meets the applicable Preferential Use Gate Utilization Target for three (3) consecutive months, the Airline's Utilization Deficiency shall be deemed cured; provided, however, that Airline thereafter exceeds the applicable Preferential Use Gate Utilization Target for a period of at least six (6) consecutive months following the deemed cure.

4.7.3 If, following the expiration of the applicable Cure Period, Airline has not cured the Utilization Deficiency, the City may, in its sole discretion and without any obligation to do so, issue to Airline a Final Recapture Notice. The Preferential Gates so recaptured will be up to that number of Gates needed to allow the Airline to meet the applicable Preferential Use Gate Utilization Target for three (3) consecutive months based on the data then available to the City. In the case of the City's recapture of less than all of the Preferential Use Gates in the Premises, the City and Airline shall, by mutual written agreement within thirty (30) days of the date of the Final Recapture Notice, designate for recapture by the City the specific Preferential Use Gate(s) and those portions of Airline's Premises that are no longer necessary to support Airline's operations at Airline's remaining Preferential Use Gate(s).

4.7.4 The effective date of the City's recapture of the Preferential Use Gate(s) and other portions of the Premises described in Section 4.7.3 shall not be less than sixty (60) days following the date of the parties' agreement described in said Section 4.7.3; provided, however, that if the parties do not reach such an agreement within the thirty-day period described in said Section 4.7.3, the effective date of the City's recapture of the Preferential Use Gate(s) and other portions of the Premises designated for recapture by the City in its sole discretion shall not be less than sixty (60) days following the expiration of said thirty-day period. Airline shall vacate the recaptured Premises as expeditiously as possible, but in no event later than the

effective date of the recapture described in this Section 4.7.4, and shall otherwise comply with the City's requirements and the Airport Rules and Regulations. During the course of vacating the Premises recaptured by the City, Airline shall minimize disruptions to other Air Carriers' operations and preserve the operational integrity of the Premises so recaptured during and after such reallocation.

4.7.5 All out-of-pocket relocation costs associated with any recapture under this Section 4.7, including without limitation the costs of the City, shall be funded by Airline. Airline's Terminal Building Charges calculated under Section 10.3 shall be decreased commensurately on a per square foot basis as a result of such recapture.

4.7.6 If the City does not issue a Final Recapture Notice to Airline regarding Airline's failure to cure a Utilization Deficiency, the City's Initial Recapture Notice applicable to such Utilization Deficiency shall be deemed void and of no further effect.

4.7.7 On or after the effective date of any recapture under this Section 4.7, the City may notify Airline if there are Preferential Use Gates and related space recaptured by the City under this Section 4.7 that are available for lease to Airline. Airline shall have the right to request an addition of such available Preferential Use Gates and related space (if any) to its Premises. Such request shall be made in writing to the City in accordance with Section 4.8.2, and shall be subject to Section 4.8.3 through Section 4.8.4.

4.7.8 The City shall have the right, but not the obligation, to convert one or more of the Preferential Use Gates recaptured by the City under this Section 4.7 to one or more Common Use Gates.

4.8 Airline's Right to Request Reallocation of Premises.

4.8.1 (a) Five (5) years after the Effective Date, Airline shall have the one-time right to reduce its Premises to facilitate its operations at the Airport; provided, however, that after Airline's proposed reduction, Airline's Premises shall contain no less than fifty percent (50%) of the number of Preferential Use Gates in its then current Premises Notice or one (1) Preferential Use Gate, whichever is greater. Airline shall submit its request for reduction in its Premises in writing to the City. If the number of Airline's Preferential Use Gates will be reduced as a result of Airline's request, Airline shall also designate in its written request the operational space in its Premises that it seeks to surrender to the City as no longer necessary to support Airline's operations at Airline's remaining Preferential Use Gates, which operational space Airline shall have the right to surrender to the City as part of such reallocation.

(b) Airline's request, if any, to reduce its Premises shall be delivered in writing to the City no later than December 31, 2020, and the resulting reallocation shall take effect on July 1, 2021. Notwithstanding Airline's right to reduce its Premises as provided above, the City may reject the specific Gates or other Premises sought to be returned by Airline to reduce its Premises if and only to the extent that the specific Gates and other Premises sought to be returned by Airline to the City would not be suitable for use by other Air Carriers for the intended and designated purpose of such Gates or other Premises; and provided further that, in

such event, Airline can then request a reduction in other Gates or space in its Premises to achieve Airline's desired reduction in its total Premises leased under this Agreement.

(c) The City shall have the right, but not the obligation, to convert one or more of the Preferential Use Gates returned to the City under this Section 4.8.1 to one or more Common Use Gates.

4.8.2 Airline shall have the right at any time during the Term to request additions to its Premises, and shall submit its request for any such additions in writing to the City, including the proposed implementation schedule for and effective date of such addition, for the City's review and written approval; provided, however, that in determining whether to approve Airline's request, the City shall give due consideration to the following factors, among others:

- (a) The availability of space or Gates at the Airport;
- (b) Airline's need to expand its Premises, including its historical, present and reasonably projected frequency of operations;
- (c) Airline's operational space adjacencies and specialized fixtures required for its operations, and the compatibility of Airline's operations and workforce with the operations and workforce of any other Signatory Airline that may be assigned to the Premises being reallocated;
- (d) any planned or completed changes in the Terminal Building;
- (e) the need to address current or reasonably anticipated operational issues or facility imbalances;
- (f) the City's current or future business needs and requirements;
- (g) competing demands for use of additional Gates or space sought by Airline (if any);
- (h) any Signatory Airline's need for hub connectivity; and
- (i) any other factors affecting the efficiency of the Airport, the utilization of Airport facilities, or fair and open competition among Air Carriers operating or desiring to operate at the Airport.

4.8.3 Airline shall complete its reallocation as expeditiously as possible, but in no event later than the effective date stated in Airline's written request for such reallocation, and shall otherwise comply with the City's requirements and the Airport Rules and Regulations. In implementing such reallocation, Airline shall minimize disruptions to other Air Carriers' operations and preserve the operational integrity of Airline's Premises during and after such reallocation.

4.8.4 All out-of-pocket relocation costs associated with any reallocation requested by Airline under this Section 4.8, including without limitation the costs of the City, shall be funded by Airline. Airline's Terminal Building Charges calculated under Section 10.3 shall be increased or decreased, as applicable, commensurately on a per square foot basis as a result of Airline's reallocation.

4.9 Revised Premises Notice for Reallocation of Premises.

If the City reallocates or recaptures any or all of Airline's Premises pursuant to this Article 4, the City shall promptly revise the Premises Notice issued to the Airline to reflect the change(s) in the Premises as a result of the City's reallocation or recapture, and issue said revised Premises Notice to the Airline. The City shall have the right, but not the obligation, to occupy, reassign, lease or otherwise use all or any portion of the Premises so reallocated or recaptured by the City under this Article 4.

4.10 Recapture or Reallocation Not a Waiver.

Neither the City's reallocation nor recapture of any or all of Airline's Premises pursuant to this Article 4 (or the City's election not to so reallocate or recapture) shall operate as a waiver by the City or Airline of any provision of this Agreement, Applicable Laws, or of Airport Rules and Regulations, or of any right herein reserved to the City or Airline, or of any right to damages herein provided, or of any right available to the City or Airline at law or in equity.

4.11 City's Scheduling Rights at Preferential Use Gates.

4.11.1 Airline and the City acknowledge that the objective of the City is to offer Air Carriers desiring to serve the Airport access to the Airport, and to provide adequate Gate positions and space in its facilities. The City intends to pursue the objective of achieving an optimum balance in the overall utilization of Gates and other Airport facilities to be achieved, if necessary, through sharing from time to time, of Gates and other passenger handling facilities subject to and in accordance with this Agreement. In furthering the objectives of providing access to the Airport, including the accommodation of new entrants, the City seeks to (1) provide Signatory Airlines with predictability and stability regarding the use of operational space at the Airport, (2) provide reasonable accommodation to Air Carriers seeking to serve the Airport, and (3) achieve a reasonable balance in the overall utilization of the Terminal Building and Gates, taking into account possible disruption of existing Signatory Airline operations and maximizing convenience to passengers.

4.11.2 The City shall, consistent with the priorities set forth in Exhibit C, attempt to accommodate Gate Requesting Airlines at Common Use Gates before scheduling Gate Requesting Airlines' arrivals and departures at any Preferential Use Gates.

4.11.3 Airline shall have scheduling priority at all of its Preferential Use Gates for all of its Periods of Use under this Article 4 with respect to its Scheduled Operations, subject to the terms of this Section 4.11. The City shall have the right, upon reasonable notice to and in consultation with Airline, to schedule at a Preferential Use Gate arrivals and departures by a Gate

Requesting Airline at all periods of time other than Airline's Periods of Use of that Preferential Use Gate, as follows:

- (a) The City shall allow Airline to select the specific Preferential Use Gate at which such accommodation will occur; provided, however, that the Preferential Use Gate selected by Airline shall be able to accommodate the size of the Gate Requesting Airline's aircraft and, if necessary, shall be a Preferential Use International Gate; and provided, further, that the City shall have the right to select a Preferential Use Gate other than that selected by Airline to be used for any accommodation if the City determines, in its reasonable discretion, that a different selection is warranted under the circumstances.
- (b) In accommodating the City in its right to schedule such operations, Airline shall allow and provide for use of its facilities at the Preferential Use Gate, or alternatively permit use of the City's podiums and equipment (including without limitation the Shared Use Terminal Equipment, if any), as may be required for the Gate Requesting Airline's efficient use of the Preferential Use Gate, subject to Section 4.12, and subject to the Gate Requesting Airline's obligation to leave the Preferential Use Gate in as good condition as on the date on which the Gate Requesting Airline commenced use of such Preferential Use Gate, reasonable wear and tear, damage from casualty and repairs that are the responsibility of the City (if any) excepted.
- (c) Airline may revise its Advance Schedule at any time after its submission to the City by submitting a written amendment of Airline's Advance Schedule to the City detailing and highlighting each such revision. Airline agrees that its amendments to its Advance Schedule shall be accurate, submitted to the City in a timely manner and made in good faith, and that the City shall be able to rely and act on Airline's Advance Schedule and all written amendments thereto submitted to the City when accommodating one or more Gate Requesting Airlines at Airline's Preferential Use Gates.
- (d) If the City has actually relied and acted upon Airline's Advance Schedule (as it may then have been most recently amended by Airline in accordance with this Section 4.11.3) by directing Airline to accommodate a Gate Requesting Airline at Airline's Preferential Use Gate at a particular time, and Airline subsequently amends its Advance Schedule in a manner that conflicts with the operation of the Gate Requesting Airline so accommodated, Airline shall relocate the accommodated Gate Requesting Airline to another Preferential Use Gate of Airline that is located in the same Concourse as that Preferential Use Gate and can accommodate the size of the Gate Requesting Airline's aircraft.
- (e) If the City determines, in its reasonable judgment, that Airline's revisions of its Advance Schedule as described in Section 4.11.3(c) are persistently unwritten, inaccurate, or not made in good faith (for example, if Airline routinely submits to the City one or more amendments to its Advance Schedule without actually completing an arrival or departure based on Airline's last such

amendment), the City may, after consultation with Airline, and in addition to any other remedies available under this Agreement, suspend or revoke Airline's right under this Section 4.11.3 to relocate a Gate Requesting Airline accommodated at Airline's Preferential Use Gate after Airline's submission of its Advance Schedule to the City.

(f) A Gate Requesting Airline shall be accommodated at Airline's Preferential Use Gate, however selected, for a period of ninety (90) days unless during such ninety-day period:

- i. the Gate Requesting Airline discontinues the flight(s) for which it sought accommodation; or
- ii. a Common Use Gate becomes available during a time that will accommodate the Gate Requesting Airline's requested Period of Use; or
- iii. another Signatory Airline's Preferential Use Gate that is located in the same Concourse as Airline's Preferential Use Gate and can accommodate the size of the Gate Requesting Airline's aircraft becomes available during a time that will accommodate the Gate Requesting Airline's requested Period of Use, and the other Signatory Airline's Average Minimum Use Level is less than Airline's Average Minimum Use Level over the prior 180 days.

(g) The City shall have the continuing right to schedule arrivals and departures by a Gate Requesting Airline in accordance with this Section 4.11.3 for subsequent ninety (90) day periods.

4.11.4 If Airline's Irregular Operation interferes with a Gate Requesting Airline's use of any Preferential Use Gate assigned to Airline, Airline shall retain scheduling priority in that particular instance, but shall work with and make commercially reasonable efforts to accommodate the Gate Requesting Airline at another Gate that is located in the same Concourse as that Preferential Use Gate and can accommodate the size of the Gate Requesting Airline's aircraft.

4.11.5 Notwithstanding anything to the contrary set forth in this Agreement, the City shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Gate arrivals and departures by a Gate Requesting Airline during Airline's Periods of Use of that Preferential Use Gate if Airline does not actually utilize that Preferential Use Gate during its Period of Use for a Scheduled Operation, and if no Common Use Gate or (if applicable) International Gate that is located in the same Concourse as that Preferential Use Gate and can accommodate the size of the Gate Requesting Airline's aircraft is available.

4.11.6 Notwithstanding anything to the contrary set forth in this Agreement, Airline shall have a scheduling priority for a Period of Use at its Preferential Use Gate under this Article 4 with respect to a Scheduled Operation only if Airline has complied with **Exhibit C** for such Scheduled Operation.

4.12 **Charges for Use of Gate by Gate Requesting Airline.**

The City shall charge any Gate Requesting Airline that is accommodated at any of Airline's Preferential Use Gates the same charges for use of the Gate that the Gate Requesting Airline would have been required to pay the City for use of a Common Use Gate plus a fifteen percent (15%) administrative fee. Airline may not demand any additional payments from the Gate Requesting Airline on account of its use of the Gate unless there is an agreement on the Gate Requesting Airline's use of Airline's equipment. As a condition of accommodation on any of Airline's Preferential Use Gates, the Gate Requesting Airline shall have executed an agreement that is substantially in the form of this Agreement, the Affiliate Operating Agreement attached hereto as **Exhibit I**, or the Non-Affiliate Non-Signatory Operating Agreement attached hereto as **Exhibit J**, as applicable, through which the Gate Requesting Airline is bound by insurance and indemnification obligations that are substantially similar to the obligations set forth herein. These insurance and indemnification obligations shall inure to the benefit of the Airline as a third-party beneficiary for any period of accommodation, and Airline shall not be required to accommodate a Gate Requesting Airline at its Preferential Use Gates if the Gate Requesting Airline's insurance and indemnification obligations are not satisfied. The City shall, as part of the annual settlement described in Section 10.5, credit Airline the full amount of any fees collected from Gate Requesting Airlines for their use of Airline's Preferential Use Gates under this Section 4.4, and shall provide Airline with a quarterly report of any such fees collected by the City for such use of any of Airline's Preferential Use Gates

4.13 **City's Control of Common Use Gates.**

The City shall retain exclusive control of the use of all Common Use Gates.

4.14 **Shared Use Terminal Equipment.**

The City reserves the right to install Shared Use Terminal Equipment at all Common Use Gates and Preferential Use Gates; provided, however, that the City shall not install Shared Use Terminal Equipment at any of Airline's Preferential Use Gates unless the City reasonably expects Air Carriers other than Airline to have Scheduled Operations at Airline's Preferential Use Gates. The City shall maintain and operate Shared Use Terminal Equipment that the City installs under this Section 4.14 in accordance with and subject to Section 9.1.1; provided, however, that the City shall include costs and expenses related to such maintenance and operation in the Airport Fees and Charges otherwise payable by Airline if and only to the extent Airline and others for whom Airline is responsible (including an Affiliate of Airline) uses the Shared Use Terminal Equipment.

Article 5

ACCOMMODATION IN SPACE OTHER THAN GATES

5.1 Priorities for Accommodation in Space Other than Gates.

5.1.1 If the City receives a request for access to space in the Terminal Building (other than Gates, which are subject to the provisions of Article 4 of this Agreement) from a

Space Requesting Airline, the City shall, whenever possible, accommodate such a request by providing access to existing common use space under the City's control.

5.1.2 If such common use space is unavailable or inadequate to meet the reasonable requirements of the Space Requesting Airline, as determined by the City, the City shall encourage Signatory Airlines voluntarily to accommodate the Space Requesting Airline, by subletting or otherwise making available for use by the Space Requesting Airline space within the Terminal Building that is subject to their exclusive use or preferential use.

5.1.3 The City shall notify the Signatory Airlines in writing when the City has determined that a Space Requesting Airline cannot be accommodated in common use space, and the Signatory Airlines shall have thirty (30) calendar days from the receipt of such notice by the Signatory Airlines to voluntarily agree to accommodate the Space Requesting Airline. Any such agreements to accommodate a Space Requesting Airline must be in writing and are subject to the City's approval under Article 19 hereof.

5.1.4 If a Space Requesting Airline is unable to meet its reasonable requirements, as determined by the City, by using common use space made available by the City, or by using space voluntarily made available by Signatory Airlines, the City shall have the right, upon thirty (30) calendar days' notice to Airline, to require Airline to accommodate the Space Requesting Airline in space designated by the City by allowing the Space Requesting Airline to use Airline's Preferential Use Premises, subject to Section 5.2; provided, however, that if the Space Requesting Airline is a Signatory Airline, the Space Requesting Airline must show, to the City's satisfaction, that it cannot reasonably accommodate its own expanded service within the Terminal Building space already subject to its exclusive use or preferential use.

5.1.5 If the City is unable to meet the reasonable requirements of the Space Requesting Airline, as determined by the City, after requiring the Signatory Airlines, including Airline, to accommodate the Space Requesting Airline in their preferential use space, the City shall consider whether the reasonable requirements of the Space Requesting Airline could be met in a reasonable, cost-effective way by constructing temporary or permanent new facilities. Only if all of these measures are inadequate to meet the reasonable requirements of the Space Requesting Airline, as determined by the City, the City may exercise its right to consolidate Airline's operations under Section 5.4.

5.2 Accommodation in Preferential Use Premises Other than Gates.

The City may not require Airline to accommodate a Space Requesting Airline in Airline's Preferential Use Premises if such accommodation would require Airline to reschedule one or more Scheduled Operations during Airline's Periods of Use. Airline shall otherwise, consistent with its rights to preferential use, accommodate such Space Requesting Airline as directed by the City by providing access to and use of its Preferential Use Premises; provided, however, that as a condition of accommodation in any of Airline's Preferential Use Premises, the Space Requesting Airline shall have executed an agreement that is substantially in the form of this Agreement, the Affiliate Operating Agreement attached hereto as **Exhibit I**, or the Non-Affiliate Non-Signatory Operating Agreement attached hereto as **Exhibit J**, as applicable, through which the Space Requesting Airline is bound by insurance and indemnification

obligations that are substantially similar to the obligations set forth herein. These insurance and indemnification obligations shall inure to the benefit of the Airline as a third-party beneficiary for any period of accommodation, and Airline shall not be required to accommodate a Space Requesting Airline in its Preferential Use Premises if the Space Requesting Airline's insurance and indemnification obligations are not satisfied.

5.3 Charges for Use of Facilities Other than Gates by Space Requesting Airline.

In the absence of an agreement to the contrary between Airline and the Space Requesting Airline that is accommodated at any facilities (other than Gates) used by Airline on an exclusive use or preferential use basis, the City shall charge the Space Requesting Airline (a) the same charges for use of the space that the Space Requesting Airline would have been required to pay the City for use of such a facility on a common use basis, (b) any additional City charges that Airline incurs as a result of its accommodation of the Space Requesting Airline, and (c) a fifteen percent (15%) administrative fee. Airline shall not demand any additional payments from the Space Requesting Airline on account of its use of such space. The City will, as part of the annual settlement described in Section 10.5, credit Airline the full amount of any fees collected from Space Requesting Airlines for their use of Airline's Preferential Use Premises under this Section 5.3, and shall provide Airline with a quarterly report of any such fees collected by the City for such use of any of Airline's Preferential Use Premises.

5.4 Consolidation of Operations.

5.4.1 If the City is unable otherwise to meet the reasonable requirements of a Space Requesting Airline in accordance with the priorities established in Section 5.1, and the City determines that Airline is under-utilizing its Preferential Use Premises other than Gates, the City may, upon not less than thirty (30) days' written notice to Airline, require Airline to vacate its under-utilized Preferential Use Premises, and consolidate its operations in its remaining Preferential Use Premises. The City's determination of Airline's utilization of Preferential Use Premises other than Gates shall be made in the City's sole discretion and may take into account, among other things, the factors listed in Section 4.5.2.

5.4.2 Airline may request that the City reconsider its determination of under-utilization within fifteen (15) calendar days of receipt of the City's notice to consolidate and, if it does so, Airline shall provide reasonable documentation of its need for the Preferential Use Premises that are the subject of the notice. If the City, after reconsidering its determination, elects to proceed with the consolidation, the City shall give Airline not less than thirty (30) calendar days' notice to vacate such underutilized Preferential Use Premises. The City may either assign the vacated premises to the Space Requesting Airline on a preferential use basis, if the Space Requesting Airline is or becomes a Signatory Airline, or deem the vacated premises to be available for common use subject to the City's exclusive control.

5.4.3 The City shall pay to Airline its reasonable costs of relocating Airline's furniture, equipment and signage in connection with the consolidation of Airline's operations, if required by the City under this Section 5.4, plus the reasonable costs of Airline's unamortized tenant improvements originally constructed with the City's consent that cannot be relocated.

5.4.4 The City shall revise the Premises Notice issued to Airline to reflect any consolidation of Airline's operations required by the City under this Section 5.4, and shall issue said revised Premises Notice to Airline when any such consolidation takes effect.

Article 6

AFFILIATES

6.1 **Airline's Designation of Affiliates.** Subject to the provisions of this Article 6, the Airline may designate one or more Affiliates to operate at the Airport. In the event the Airline designates an Affiliate, the following provisions shall apply to the Airline and its Affiliates:

6.1.1 The Airline's designation of an Affiliate shall not be effective until Airline has first (a) notified the Aviation Director in writing that the Airline intends to designate the Affiliate; (b) ensured that the Affiliate has entered into an Affiliate Operating Agreement with the City in substantially the same form as that attached as **Exhibit I**; and (c) confirmed for the Aviation Director in writing that the Airline will pay to the City all of the Affiliate's Landing Fees, Terminal Building Charges, and other charges due to the City on account of the Affiliate's use of any Airport facilities or Airport Services as an Affiliate of the Airline, as provided in Section 6.1.2.

6.1.2 All Affiliates shall report and pay to the City all PFCs (if any) that they collect on account of enplaning passengers at the Airport. The Airline shall pay to the City all Landing Fees, Terminal Building Charges and other charges (including PFCs) due to the City on account of the Affiliate's use of any Airport facilities or Airport Services, and shall submit to the City all Monthly Activity Reports detailing each Affiliate's use of any Airport facilities or services as an Affiliate of the Airline in accordance with Section 10.7.2; provided, however, that both the Airline and the Affiliate shall remain jointly and severally liable to the City for the payment of all Landing Fees, Terminal Building Charges and other charges (including PFCs), and the submission of all Monthly Activity Reports, that are due to the City on account of the Affiliate's use of any Airport facilities or services as an Affiliate of the Airline.

6.2 **Applicability of Agreement to Affiliates.** For so long as Airline and its Affiliates have complied with the payment and reporting obligations under Article 10, then:

6.2.1 Each Affiliate shall have the same rights as Airline to use Airline's Premises.

6.2.2 The Landing Fees, Terminal Building Charges and other charges due on account of each Affiliate's use of Airport facilities or services shall be calculated as if the Affiliate were a Signatory Airline; provided, however, that the Affiliate's activity as an Affiliate of Airline shall be treated as activity of the Airline; and further provided that in calculating Joint Use Fees under Section 10.3.4, the Affiliate shall be treated as if it were Airline and shall not be counted as a separate Signatory Airline for purposes of proration.

6.2.3 Airline and each of its Affiliates shall be treated as a single Signatory Airline for purposes of determining a Majority-In-Interest and each Affiliate's landed weight and

all of the payments of Terminal Building Charges described in Section 10.3 on account of the Affiliate's use of Airport facilities or services as an Affiliate of Airline shall be treated as landed weight of and payments by Airline for purposes of determining a Majority-in-Interest.

6.2.4 Each Affiliate's activity as an Affiliate of Airline shall be treated as activity of Airline for purposes of allocations and reallocations of Airline Premises and Preferential Use Gate Utilization Targets under Article 4 and Section 5.4.

6.2.5 Payments by Airline or any of its Affiliates on account of its activity as an Affiliate of Airline shall be treated as payments by Airline for purposes of sharing Net Remaining Terminal Complex Revenue under Section 10.6.

6.3 **Designation by More than One Signatory Airline.** More than one Signatory Airline may from time to time designate the same Passenger Carrier as its Affiliate, and each such Signatory Airline shall only be responsible for such Passenger Carrier's operations when such Passenger Carrier operates as such Signatory Airline's Affiliate.

6.4 **Termination of Status of Affiliate.** A Passenger Carrier's status as Affiliate of Airline may be terminated by Airline upon not less than thirty (30) days' written notice to the City. Airline's liability to the City for the payment of all Landing Fees, Terminal Rents and other charges (including PFCs), and the submission of all activity reports, that are due to the City on account of the use of any Airport facilities or services by Airline's Affiliates shall survive any termination of Affiliate status; provided, however, that Airline shall only be responsible for such payments and reports as relate to the terminated Affiliate's operations before its proper termination by Airline took effect.

6.5 **Affiliate as Signatory Airline.** If a Passenger Carrier operating at the Airport as an Affiliate of Airline becomes a Signatory Airline, such Passenger Carrier must immediately terminate its status as an Affiliate of Airline in accordance with the Affiliate Operating Agreement executed by the Affiliate and the City.

Article 7

CAPITAL IMPROVEMENT PROJECTS

7.1 **Approved Projects.**

7.1.1 The City shall proceed with the Pre-Approved Projects without further review by the Majority-in-Interest.

7.1.2 Design and Construction of Approved Projects.

(a) Subject to Section 7.1.3, the City shall have the right, and to the extent Revenue Bond proceeds are available for such purpose, the obligation, to design and construct the Approved Projects. The City shall use commercially reasonable efforts to complete Approved Projects in a manner that minimizes materially adverse impacts on Airline's use and occupancy of the Premises.

(b) Airline acknowledges and agrees that the City may delegate responsibilities for the design, construction and equipping of Approved Projects; provided, however, that all construction and equipping of Approved Projects shall be done in a good and workmanlike manner, and that the City shall retain the power and authority to enforce all terms and provisions of all design, construction and equipment contracts.

(c) Airline shall use commercially reasonable efforts to take such action as the City may reasonably request to enable the City to implement Approved Projects in a timely and cost-effective manner.

(d) The City and Airline agree that, subject to Section 7.1.3, any change of an Approved Project that is requested by Airline for the sole benefit of Airline after award of a construction contract shall require the Aviation Director's written approval and, if so approved, the incremental costs of such change shall be implemented at the expense of Airline.

7.1.3 Changes in Design or Budget of Approved Projects.

(a) The City shall be required to obtain Majority-in-Interest approval in the event of (i) a material change in the design of any Approved Project; or (ii) a projected budget overrun in excess of ten percent (10%) for any Approved Project if such budget overrun is identified prior to the award of a construction contract for the Approved Project.

(b) The City shall obtain a Majority-in-Interest approval for an item described in subsection (a), above, by submitting a written request to all Signatory Airlines that describes such item. Such item shall be deemed approved by a Majority-in-Interest unless letters from a Majority-in-Interest of Signatory Airlines disapproving such item are delivered to the Aviation Director within forty-five (45) days of the City's request for Majority-in-Interest approval.

(c) After the award of a construction contract for any Approved Project, (i) the City shall notify the Signatory Airlines of any projected budget overrun in excess of ten percent (10%), and shall consult with the AAAC about potential means to reduce the final cost of construction of the Approved Project, and (ii) the City shall obtain a new Majority-in-Interest approval for any projected budget overrun in excess of twenty percent (20%). In the event of a proposed budget overrun in excess of twenty percent (20%), the City shall submit to the AAAC a written proposal as described in Sections 7.3(a) through (f) (as applicable), which proposal and approval shall apply only to the projected budget overrun. The projected budget overrun in excess of twenty percent (20%) shall be deemed approved by a Majority-in-Interest unless letters from a Majority-in-Interest of Signatory Airlines disapproving such projected budget overrun are delivered to the Aviation Director within ten (10) business days of the City's request for Majority-in-Interest approval.

7.2 **Capital Improvement Projects Exempt from Majority-In-Interest Review.**

7.2.1 A Capital Improvement Project that is not an Approved Project and meets any one of the criteria set forth below shall be exempt from Majority-in-Interest review ("Exempt Project"):

- (a) the Capital Improvement Project is required by a federal or state agency of superior authority with jurisdiction over the Airport; or
- (b) the Capital Improvement Project is of an emergency nature, which, if not made, would substantially impair the current operation of the Airport; or
- (c) the Capital Improvement Project is required to make available additional terminal space or related facilities for the expansion of an Air Carrier, or to make space or facilities available in a terminal to accommodate a new entrant or expanding Air Carrier; provided that such Air Carrier enters into a binding commitment to lease the space so made available for at least the remaining Term and on the same terms as provided for the lease of comparable space under this Agreement; and provided further that existing space or facilities are not otherwise available to accommodate the Air Carrier under Article 2, Article 3, Article 4 and Article 5 of this Agreement in a competitive, non-disruptive and otherwise satisfactory manner; or
- (d) the Capital Improvement Project is to repair or replace Airport property damaged or destroyed by fire or other casualty; or
- (e) the Capital Improvement Project is made to settle claims or lawsuits, satisfy judgments, or comply with judicial or administrative orders against the City arising from or relating to its design, construction, ownership, maintenance or use of the Airport; or
- (f) the Capital Improvement Project will not affect the amount of Capital Expenses in the Airfield Revenue Requirement or in the Terminal Revenue Requirement described, respectively, in Sections 10.2.1 and 10.3.1; or
- (g) the total estimated budget for the Capital Improvement Project net of any PFCs or federal or state grants is at or below Five Million Dollars (\$5,000,000) as escalated by the then current Turner Construction Cost Index; or
- (h) the costs of the Capital Improvement Project are allocable to an Excluded Cost Center; or
- (i) the Capital Improvement Project is to purchase, repair, install, maintain, improve or replace rolling stock used or to be used at the Airport.

7.2.2 As provided by 49 U.S.C. § 40117(f), no Capital Improvement Project shall be subject to Majority-in-Interest voting or approval to the extent such Project is financed by PFCs or PFC-backed bonds.

7.2.3 The City shall notify all Signatory Airlines, including Airline, in writing of any proposed Exempt Project under this Section 7.2, together with a statement as to why it is an Exempt Project, and, if practicable, shall provide Airline with an opportunity to comment upon the proposed Exempt Project. The City shall use commercially reasonable efforts to complete Exempt Projects in a manner that minimizes materially adverse impacts on Airline's use and occupancy of the Premises. Airline acknowledges and agrees that the City may delegate

responsibilities for the design, construction and equipping of Exempt Projects; provided, however, that all construction and equipping of Exempt Projects shall be done in a good and workmanlike manner, and that the City shall retain the power and authority to enforce all terms and provisions of all design, construction and equipment contracts. Airline shall use commercially reasonable efforts to take such action as the City may reasonably request to enable the City to implement Exempt Projects in a timely and cost-effective manner.

7.3 Method of Obtaining Majority-in-Interest Approval for Additional Projects.

The City shall be required to obtain Majority-in-Interest approval for any Capital Improvement Project that is not an Approved Project or an Exempt Project (“Additional Project”) and shall submit a written proposal to all Signatory Airlines that includes a statement describing the purpose of the Additional Project and an estimate of (a) the budget for and a description of such Additional Project, (b) the Capital Expense and estimated O&M Expenses resulting therefrom, (c) the sources and uses of funds, (d) the construction schedule(s) for such Additional Project, (e) the proposed allocation of Capital Expense among and within the Cost Centers, and (f) the projected impact on Landing Fees and Terminal Building Charges calculated under Article 10. An Additional Project shall be deemed approved by a Majority-in-Interest unless letters from a Majority-in-Interest of Signatory Airlines disapproving such Additional Project are delivered to the Aviation Director within forty-five (45) days of the City’s request for Majority-in-Interest approval. The City shall notify the Signatory Airlines in writing of its intent to proceed with any Additional Project approved pursuant to this Section 7.3 or funded by one or more Air Carriers pursuant to Section 7.4. The City shall use commercially reasonable efforts to complete Additional Projects in a manner that minimizes materially adverse impacts on Airline’s use and occupancy of the Premises. Airline acknowledges and agrees that the City may delegate responsibilities for the design, construction and equipping of Additional Projects; provided, however, that all construction and equipping of Additional Projects shall be done in a good and workmanlike manner, and that the City shall retain the power and authority to enforce all terms and provisions of all design, construction and equipment contracts. Airline shall use commercially reasonable efforts to take such action as the City may reasonably request to enable the City to implement Additional Projects in a timely and cost-effective manner.

7.4 Majority-in-Interest Disapproval.

If approval by a Majority-in-Interest is required, but not provided, for a material change to or budget overrun on an Approved Project under Section 7.1.3(b) or for an Additional Project described in Section 7.3, the City may proceed with such Project if one or more Air Carriers agree to pay the costs associated with such Project using their own funds.

Article 8

UTILITIES AND AIRPORT SERVICES

8.1 **Utilities for the Premises.** Consistent with the terms of Exhibit B and Exhibit H, Airline and the City agree as follows:

(a) Electricity. The City shall provide electricity to the Premises only by means of the wiring installation in existence at the commencement of the Term, or

constructed as part of an Approved Project or an Exempt Project. Airline agrees that its use of electric current shall never exceed the capacity of the wiring installation in place.

(b) HVAC. The City shall provide utility systems to provide heat and air conditioning to the Premises in reasonable quantities by means of the utility installation in existence at the commencement of the Term, or constructed as part of an Approved Project or an Exempt Project. Airline agrees that its use of said utility systems for heat and air conditioning shall never exceed the capacity of the utility installation in place.

(c) Water. The City shall provide potable water to the Premises only by means of the plumbing installation in existence at the commencement of the Term, or constructed as part of an Approved Project or an Exempt Project.

(d) Telephone/Telecommunications. The City shall remain responsible for all telephone and telecommunications infrastructure, but shall have no obligation to provide telephone or telecommunication services to the Premises. During the Term, Airline shall coordinate with the City the installation, modification and removal of Airline's telephones, television, radios, and all other telecommunications equipment.

(e) Natural Gas. The City shall provide natural gas to the Premises only by means of the utility installation in existence at the commencement of the Term, or constructed as part of an Approved Project or an Exempt Project. Thereafter, Airline shall not install within the Premises any equipment that requires natural gas in its operation without the City's prior written approval. Airline agrees that its use of said utility system for natural gas shall never exceed the capacity of the utility system in place.

(f) Sewer and Drainage. The City shall provide sewer and drainage service to the Premises only by means of the sewer and drainage systems in existence at the commencement of the Term, or constructed as part of an Approved Project, or an Exempt Project

(g) Points of Service. The City shall determine the points in the Premises where utility services will be made available to Airline. If Airline desires to change such points of service, and the City agrees, in its sole discretion, to such change, the City shall complete such change, and the expense of making such change shall be at the Airline's sole cost and expense. Any additional utility services requested by Airline and not otherwise provided by the City shall be provided only with the City's prior written approval in accordance with the Airport Rules and Regulations, shall be obtained and paid for at Airline's sole cost and expense, and shall be subject to applicable fees and charges imposed separately by utility providers.

8.2 City's Reservations and Right to Relocate Lines.

(a) Unless otherwise specifically set forth in this Agreement, the City reserves and retains the right, with reasonable advance notice to Airline (other than in the case of an emergency, in which case no notice to Airline is required), to construct, reconstruct, install, repair, remove, renew, operate and use pipelines, sewer or drain lines, other utility lines, copper wire, fiber-optic or high-speed wireless networks, antennae, utility poles, light fixtures, and other fixtures or appurtenances, provided that City shall use commercially reasonable efforts to

complete such activities in a manner that minimizes materially adverse impacts on Airline's use and occupancy of the Premises.

(b) If any pipeline, utility line or appurtenance installed by Airline is so located that it shall be necessary, as determined by the City in its sole discretion, to change, alter, relocate or reconstruct it to allow the City, or an independent party through an arrangement with the City, to install sewer or drain lines or other utility lines, such change, alteration, relocation or reconstruction shall be made by Airline, as requested by the City, or, at Airline's election, shall be made by the City, in each case at the City's sole cost and expense. If Airline elects to have the City perform the change, alteration, relocation or reconstruction requested by the City, the City shall indemnify and hold Airline harmless from all claims and costs for bodily injury or property damage caused by the City's performance of such change, alteration, relocation or reconstruction, except to the extent such claims and costs arise out of or relate to the negligence or willful misconduct of Airline.

8.3 Airline's Acts. Airline shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of any drainage and sewerage system, water system, ventilation, air-conditioning and heating systems, communications system, key card access systems, elevators and escalators, electrical system, fire-protection system, sprinkler system, alarm system, fire hydrants, hoses, or other utility or other systems, if any, installed or located on, under, in or adjacent to the Premises now or in the future.

8.4 Airport Services. The City shall provide to Airline the Airport Services described in Exhibit H.

8.5 No Constructive Eviction. The City shall make diligent efforts to supply Airline with utilities and the Airport Services in accordance with this Article 8; provided, however, that if the City makes such diligent efforts, but fails to provide any of said utilities or Airport Services, said failure shall not constitute a constructive eviction. Further, the City shall not be liable to Airline for, and subject to Section 15.1, Airline expressly releases and discharges the City from, any and all claims, demands and causes of action that the Airline may now or hereafter have against the City, and any reduction in Terminal Building Charges, arising or alleged to have arisen out of any interruption of utility services (i) to the extent any utility shall become unavailable from any public utility company, public authority, or any other independent person or entity supplying or distributing such utility, or (ii) for any interruption in any service hereunder (including, without limitation, any heating, ventilation or air-conditioning) caused by the making of any necessary repairs or improvements, or (iii) which results from any cause beyond the City's reasonable control. In no event shall the City be liable to the Airline for indirect or consequential damages under this Section 8.5.

8.6 Costs of Utilities and Airport Services. The costs of utilities and Airport Services shall be allocated to Airline and the City as described in Exhibit H.

Article 9

MAINTENANCE AND REPAIR OF AIRPORT AND PREMISES

9.1 City's Maintenance and Repair of Airport and Terminal Complex.

9.1.1 Except as otherwise provided in this Agreement, the City shall: (a) with reasonable diligence, maintain, repair and operate the Airport and all appurtenances, facilities, improvements, systems, equipment (including without limitation the City-Owned Equipment), and Airport Services now or hereafter connected therewith in a manner consistent with the standards established by the FAA and any other governmental agency having jurisdiction of the Airport; and (b) complete the repair, operation and maintenance responsibilities set forth in **Exhibit B** with reasonable diligence and prudence; and (c) keep the Airport in an orderly, sanitary and presentable condition. Except where, and to the extent, caused by the gross negligence or intentional wrongdoing of the City, its agents, employees, contractors, officers, directors or predecessors in interest, the City shall not be liable to Airline for failure to furnish all or any services to be provided by the City hereunder, whether due to mechanical breakdown or any other causes beyond the City's reasonable control, and Airline expressly waives all claims against the City for damages arising or resulting from any such failure.

9.1.2 The City acknowledges that its operation, repair and maintenance responsibilities under this Section 9.1 shall include snow plowing, landscaping, sidewalk and street sweeping, and Airfield pavement de-icing at the Airport. Airline acknowledges and agrees that the City shall provide to Airline the aircraft de-icing services described in Section 3.3.5 through the City's consolidated de-icing facilities at locations to be designated by the Aviation Director, and that such aircraft de-icing services shall be the sole and exclusive aircraft de-icing services that Airline shall use in connection with its operations and activities at the Airport during the Term.

9.2 **Airline's Maintenance and Repair of the Premises.** Airline shall maintain and repair, at its expense, the Premises in accordance with its obligations set forth in **Exhibit B**, provided that the Airline shall be responsible for maintenance and repair of those portions of the Exclusive Use Premises and Preferential Use Premises that are not accessible to the public, and that the City shall be responsible for maintenance and repair of those portions of the Exclusive Use Premises and Preferential Use Premises that are accessible to the public. Airline shall keep its Exclusive Use Premises and Preferential Use Premises, including without limitation the Airline's fixtures and equipment therein, in a clean, neat, safe, and sanitary condition, and in good order, at all times, except for damages or loss due to reasonable wear and tear, fire or other casualty or other cause beyond Airline's control. Airline shall not store nor allow accumulation of trash or debris on any portion of the Premises, nor use the City's trash containers without the City's prior written approval. Airline may contract with the City for completion of the janitorial and cleaning services for which it is responsible under this Section 9.2, and if Airline elects to do so, the Airline shall pay the City for its costs of providing such services to Airline; provided, however, that such an arrangement shall not relieve Airline of its obligations under this Section 9.2.

9.3 Inspections by City. The City may cause the Premises and Airline's operations at the Airport to be inspected to confirm that the Premises and Airline's operations comply with the requirements of this Agreement. The City shall provide, when practicable, reasonable advance notice to Airline of such an inspection, except in the case of an emergency, in which case no advance notice to Airline shall be required. The City shall use reasonable efforts not to interfere with Airline's operations during any such inspection, and Airline shall cooperate with such inspection. If such inspection shows that Airline is not complying with the requirements of this Agreement, without limiting the City's rights and remedies under this Agreement, the City reserves the right to complete these responsibilities for Airline at Airline's expense, and may require that Airline reimburse the City for the reasonable costs of such inspection in addition to the City's costs to complete said responsibilities for Airline. Airline shall promptly remedy any noncompliance shown in any such inspection.

9.4 Airline Improvements.

9.4.1 General. In no event shall Airline make any alterations or improvements to any Joint Use Premises, or Common Use Premises. Airline shall make no alterations or improvements upon, and shall install no fixtures within, its Exclusive Use Premises and Preferential Use Premises without first obtaining the prior written consent of the City. Airline shall comply with the requirements of the City, including without limitation those set forth in the Airport Rules and Regulations applicable to such alterations, improvements, installations and other work undertaken by Airline, as such requirements may be amended by the City from time to time, and which requirements are hereby incorporated into and made a part of this Agreement. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures) shall be installed by Airline, they shall at once become part of the realty and the property of the City. Moveable furniture, equipment and all trade fixtures shall be and remain the property of Airline, and Airline, at its expense, upon the expiration or earlier termination of this Agreement, shall promptly remove any such furniture, equipment and trade fixtures and, at the City's request, shall restore the Premises to its condition prior to the installation of any such property. Trade fixtures not removed from the Premises upon expiration or earlier termination of this Agreement shall become property of the City, subject to the rights of secured parties.

9.4.2 Visual Artists Rights Act. With respect to construction or installation of any improvements at the Premises that might implicate the requirements of the Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113 (as the same may be amended from time to time, "VARA"), Airline agrees that it shall not (i) hire any artist for the purpose of installing or incorporating any work of visual art into or at the Premises, or (ii) permit the installation or incorporation of any work of visual art into or at the Premises, without the City's prior written approval. Airline shall provide such reasonable documentation as the City may request in connection with any such approval, and the City's approval may be conditioned upon the artist's execution of a waiver of such artist's rights under VARA, in form and substance acceptable to the City.

9.5 Damage or Destruction of Premises.

9.5.1 Damage or Destruction. If any portion of the Terminal Building in which Airline occupies Premises under this Agreement is damaged by fire, earthquake or other

casualty, but is not rendered unfit for Airline's use, the City shall repair the damage. If the damage renders the Premises unfit for Airline's use, and if the damage is repairable using reasonable diligence within six (6) months from the date of the occurrence, the City shall repair the Premises. If any portion of the Terminal Building in which Airline occupies Premises under this Agreement is completely destroyed by fire, earthquake or other casualty, or damaged to such extent that such damage cannot be repaired within six (6) months from the date of the occurrence, either party shall have the option to terminate this Agreement as to the portion of the Premises so damaged or destroyed. Within thirty (30) days of such occurrence, (a) Airline shall provide written notice to the City that Airline intends to terminate the Agreement, or (b) the City shall provide written notice to Airline that the City intends to terminate the Agreement or repair or reconstruct the Premises. If Airline has not terminated this Agreement pursuant to this Section 9.5.1 and the City elects to repair or reconstruct the Premises, the City shall begin any work necessary to do so, and shall use reasonable efforts to provide the Airline with temporary substitute space while the repairs are being completed. If either Airline or the City elects to terminate this Agreement, such termination shall be effective as to the Premises sixty (60) days after the occurrence of the damage; provided, however, that before electing to terminate and upon the Airline's written request if Airline has not itself terminated this Agreement, the City shall use reasonable efforts to provide Airline with substitute space for the remaining Term.

9.5.2 Abatement of Fees and Charges. For the period from the occurrence of any damage to the Premises to the date of completion of the repairs to the Premises (or to the date of termination of the Agreement as to such portions of the Premises, if either Airline or the City shall terminate this Agreement), the Airport Fees and Charges allocable to the particular Premises shall be abated in the same proportion as the unusable portion of the Premises bears to the whole, or, if the damage or destruction has rendered the entire Premises unusable, said Airport Fees and Charges shall be abated entirely, and upon termination of the Agreement as to such damaged or destroyed Premises, the Airline shall have no further obligation to pay the Airport Fees and Charges; provided, however, that the City may charge a reasonable rental for any substitute space it furnishes to Airline pursuant to Section 9.5.1.

Article 10

CALCULATION OF AIRPORT FEES AND CHARGES

10.1 **Rate-Setting Methods.** Except as provided in Section 10.10, the Landing Fees and Terminal Building Charges to be charged by the City and paid by the Airline and all other Air Carriers for use of the Airport from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using the rate-setting methods set forth in this Article 10. **Exhibit G** displays for illustrative purposes only a calculation of Landing Fees and Terminal Building Charges for Fiscal Year 2015 showing the methods set forth in this Article 10 based on currently available budget and forecast levels of Airport activity for the year. The City shall not include PFCs or federal or state grants received by the City in the calculation of Landing Fees and Terminal Building Charges. Except as otherwise provided in this Agreement or in any other contract between Airline and the City, no other fees or charges shall be imposed by the City on Airline in connection with its use of the Airport for the Permitted Uses.

10.2 **Landing Fee.** Airline shall pay Landing Fees for its use of the Airfield based on its Maximum Gross Landed Weight at the Airport during the Fiscal Year. The Landing Fee effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section.

10.2.1 Airfield Revenue Requirement. The City shall calculate the Airfield Revenue Requirement by computing the sum of the following budgetary items for each Fiscal Year:

- (a) The O&M Expenses and Capital Equipment Depreciation allocable to the Airfield; *plus*
- (b) Fifty percent (50%) of the change in the O&M Reserve; *plus*
- (c) 1.25 times the Revenue Bond Debt Service allocable to the Airfield; *plus*
- (d) Amortization of City Investment allocable to Airfield Capital Improvement Projects; *plus*
- (e) The Airport Services Facilities Costs allocable to the Airfield; *minus*
- (f) Ancillary Airfield Revenues.

10.2.2 Forecast Maximum Gross Landed Weight. The City shall determine, based upon whatever estimates are provided by Air Carriers and other available information, the aggregate Forecast Maximum Gross Landed Weight for all aircraft greater than 12,500 pounds carrying passengers or cargo in commercial service that are expected to land at the Airport during the next Fiscal Year.

10.2.3 Calculation of Landing Fee. The City shall calculate the Landing Fee by dividing the Airfield Revenue Requirement by the Forecast Maximum Gross Landed Weight. The Landing Fee shall be expressed in dollars and cents per one thousand pounds in Maximum Gross Landed Weight.

10.3 **Terminal Building Charges.** Airline shall pay Terminal Building Charges for its use of the Terminal Building. The Terminal Building Charges effective July 1st of each Fiscal Year shall be determined according to the rate-setting method set forth in this Section.

10.3.1 Airline Terminal Revenue Requirement. The City shall calculate the Airline Terminal Revenue Requirement by:

First, calculating the Total Terminal Requirement by computing the sum of the following budgetary items for each Fiscal Year:

- (a) The O&M Expenses and Capital Equipment Depreciation allocable to the Terminal Building, excluding costs billed directly to and paid by Air Carriers; *plus*

- (b) Fifty percent (50%) of the change in the O&M Reserve; *plus*
- (c) 1.25 times the Revenue Bond Debt Service allocable to the Terminal Building; *plus*
- (d) Amortization of City Investment allocable to Terminal Building Capital Improvement Projects; *plus*
- (e) The Airport Services Facilities Costs allocable to the Terminal Building; *minus*
- (f) The FIS Facility Requirement (to be recovered through the FIS Facility Fee); *minus*
- (g) The costs of the Shared Use Terminal Equipment (to be recovered through the Common Use Gate and PLB Fee).

Second, calculating the Gross Terminal Rental Rate by dividing the Total Terminal Revenue Requirement by total Rentable Terminal Space.

Third, calculating the Airline Terminal Revenue Requirement by multiplying the Gross Terminal Rental Rate by total Airline Leased Terminal Space, and then subtracting the Inline Baggage Handling System Requirement and the Passenger Loading Bridge Requirement.

10.3.2 Calculation of Terminal Rental Rate. The City shall calculate the Terminal Rental Rate by dividing the Airline Terminal Revenue Requirement by the total Airline Leased Terminal Space at the Airport. The Terminal Rental Rate shall be expressed in dollars and cents per square foot.

10.3.3 Terminal Rental Rate. The Terminal Rental Rate shall apply to the Exclusive Use Premises (if any), the Preferential Use Premises (if any), the Common Use Premises (if any) and the Joint Use Premises (if any) assigned to Airline in the Premises Notice in accordance with this Section 10.3.

10.3.4 Joint Use Fee. Airline shall pay a Joint Use Fee for its use of the Joint Use Premises (if any) assigned to Airline in the Premises Notice. The Joint Use Fee shall be calculated as follows:

(a) The City shall calculate the Joint Use Requirement by multiplying the Terminal Rental Rate by the total square footage of the Baggage Claim Areas, Baggage Make-up Areas, Security Checkpoint Areas, and any other areas hereafter designated as Joint Use Space by the Aviation Director, less the TSA Credits and other applicable credits (if any).

(b) The City shall calculate the Joint Use Fee by applying the Joint Use Formula to the Joint Use Requirement for the Fiscal Year.

(c) Low Volume Air Carriers shall pay for use of Joint Use Premises (if any) solely on the basis of each such Air Carrier's Enplanements and at the same rate per

Enplaned Passenger as the City uses to recover eighty percent (80%) of the Joint Use Requirement under the Joint Use Formula; provided, however, that any Low Volume Air Carrier which is assigned and accepts a Preferential Use Gate shall pay the Joint Use Fee.

10.3.5 Common Use Gate and PLB Fee. Airline shall pay a Common Use Gate and PLB Fee for its use of Common Use Gates, Shared Use Terminal Equipment and PLBs based on the number of Seats Delivered to Common Use Gates by the Airline during the Fiscal Year. The Common Use Gate and PLB Fee shall be calculated as follows:

(a) The City shall calculate the Common Use Gate and PLB Requirement by computing the sum of (i) the product of the Terminal Rental Rate times the total square footage of all Common Use Gates, plus (ii) the sum of the O&M Expenses and Capital Costs allocable to the Shared Use Terminal Equipment, plus (iii) the product of the total number of Passenger Loading Bridges times the Passenger Loading Bridge Fee described in Section 10.3.8(b).

(b) To calculate the Common Use Gate and PLB Fee, the City shall divide the Common Use Gate and PLB Requirement by the forecast number of Seats Delivered to Common Use Gates during the Fiscal Year.

10.3.6 Common Use Ticket Counter Fee. The Airline shall pay a Common Use Ticket Counter Fee for its use of Common Use Ticket Counters based on the Airline's hourly usage thereof during the Fiscal Year. The Common Use Ticket Counter Fee shall be calculated as follows:

(a) The City shall calculate the Common Use Ticket Counter Requirement by multiplying the Terminal Rental Rate times the sum of (i) the total square footage of the Common Use Ticket Counters, plus (ii) the total square footage of the Common Use Ticket Office Space.

(b) To calculate the Common Use Ticket Counter Fee, the City shall divide the Common Use Ticket Counter Requirement by the forecast Common Use Ticket Counter Annual Hours Used during the Fiscal Year.

10.3.7 FIS Facility Fee. The Airline shall pay a FIS Facility Fee for its use of the FIS Facility based on the number of the Airline's International Arriving Passengers during the Fiscal Year. The FIS Facility Fee shall be calculated as follows:

(a) The City shall calculate the FIS Facility Requirement by multiplying the Terminal Rental Rate by the total square footage of the FIS Facility.

(b) To calculate the FIS Facility Fee, the City shall divide the FIS Facility Requirement by the total number of the International Arriving Passengers at the Airport during the Fiscal Year.

10.3.8 Passenger Loading Bridge Fee. The Airline shall pay a Passenger Holding Bridge Fee for its preferential use of the City-owned Passenger Loading Bridges on a per PLB basis. The Passenger Loading Bridge Fee shall be calculated as follows:

(a) The City shall calculate the Passenger Loading Bridge Requirement by computing the sum of (i) the O&M Expenses allocable to the City-owned Passenger Loading Bridges plus (ii) the Capital Costs allocable to the City-Owned Passenger Loading Bridges.

(b) To calculate the Passenger Loading Bridge Fee, the City shall divide the Passenger Loading Bridge Requirement by the number of City-Owned Passenger Loading Bridges.

10.3.9 Inline Baggage Handling System Fee. The Airline shall pay an Inline Baggage Handling System Fee for its use of the Inline Baggage Handling System on a per bag basis. The Inline Baggage Handling System Fee shall be calculated by dividing the Inline Baggage Handling System Requirement by the forecast number of Originating Bags handled during the Fiscal Year.

10.3.10 Kiosk Fees. Airline shall pay a Kiosk Fee for placing ticketing kiosks at any locations outside of the Premises as approved in writing by the City, based on eight (8) square feet for each such kiosk multiplied by the Terminal Rental Rate or, for grouped kiosks, a reasonable lower rate determined at the discretion of the Aviation Director after consultation with Airline.

10.4 **Mid-year Adjustments**. If, at any time during any Fiscal Year, the City's forecast (based on its most recently available information as to the amounts actually incurred or realized during such Fiscal Year for each of the items listed in Section 10.2 and Section 10.3, and as to Landing Fees and Terminal Complex Charges actually received by the City) indicates that Airline's payment of Terminal Building Charges and Landing Fees at then-existing rates would result in an underpayment or overpayment of at least ten percent (10%) of the amount required hereunder to be generated by the City through Terminal Building Charges and Landing Fees during such Fiscal Year, the City may adjust the remaining monthly Terminal Building Charges and Landing Fee Rate for such Fiscal Year to conform to its current forecast.

10.5 **Annual Settlements**.

10.5.1 Upon completion, but in no event later than two hundred forty (240) days after the close of each Fiscal Year, the City shall provide to Airline its Final Audit, which shall be a copy of its annual audit report, prepared in accordance with generally accepted accounting principles and certified by an Independent Accountant, covering the Airport's operations for such preceding Fiscal Year. Such Final Audit shall contain information sufficient to allow the City to compare its projections of Landing Fees and Terminal Building Charges to actual experience. If Terminal Building Charges or Landing Fees actually paid by Airline were greater than the corresponding amounts chargeable to Airline, the City shall apply the amount of such overpayment to the account of Airline within thirty (30) days of Airline's receipt of the Final Audit. If Terminal Building Charges or Landing Fees paid by Airline were less than the corresponding amounts chargeable to Airline, the City shall apply the amount of such deficiency to the account of Airline within thirty (30) days of Airline's receipt of the Final Audit

10.5.2 At the same time the City makes annual settlements with Airline under Section 10.5.1, the City shall rebate to Airline's account Airline's additional twenty-five percent (25%) payment of the Revenue Bond Debt Service charged by the City to all Signatory Airlines pursuant to Sections 10.2.1(c) and 10.3.1(c) during the immediately preceding Fiscal Year.

10.5.3 For Fiscal Year 2026, the final year of the Term, the City shall make a final settlement in accordance with Section 10.5.1, and any resulting credit shall be issued to Airline, and any resulting charge will be invoiced to Airline, notwithstanding the termination of the Agreement on June 30, 2026.

10.6 **Sharing of Net Remaining Terminal Complex Revenue.**

Commencing on the Effective Date, at such time and in such manner as provided in this Section 10.6, the City agrees to pay to each Signatory Airline its pro-rata share of forty percent (40%) of Net Remaining Terminal Complex Revenue (if any) for each Fiscal Year in connection with the City's annual settlement with Airline described in Section 10.5. This Section 10.6 shall apply only to Air Carriers that were Signatory Airlines during the immediately preceding Fiscal Year. Each such Signatory Airline's pro-rata share shall be determined by dividing the total amount of such Signatory Airline's payments made pursuant to Sections 10.2 and 10.3 by the total amount of all such payments made by all Signatory Airlines pursuant to Sections 10.2 and 10.3 during the immediately preceding Fiscal Year. The Airline's pro-rata amount, if any, owed by the City to Airline pursuant to this Section 10.6 for each Fiscal Year shall be determined at the time of the Final Audit for such Fiscal Year. The City shall, in addition to all other rights under this Agreement, have the right to set off against any such pro-rata amount the amounts, if any, then due and owing by Airline to the City under this Agreement or otherwise owing by Airline to the City.

10.7 **Activity Reports.**

10.7.1 Flight Information Management System. Airline shall provide to the City information for the City's Flight Information Management System by providing real time data output from Airline's internal flight information display system, computer reservations system, cargo load message transmission, ARINC or SITA transmissions, or other information systems (including commercial information systems) on a per flight basis. Airline's flight information shall be in a format prescribed by the City and consistent with the requirements of the City's FIDS, Baggage Information Display Systems ("BIDS") and Resource Management Systems ("RMS"), and shall include, at least, the following information about the Airline's operations and activities at the Airport. For each *arriving* flight: (a) flight number and Airport Gate utilized, (b) aircraft registration number and aircraft type, (c) actual time of arrival at the Airport (wheels-on) and actual time of arrival at the Gate (aircraft parked at the Gate), (d) baggage claim number, (e) scheduled time of arrival, (f) estimated time of arrival, (g) aircraft parking position, (h) international or domestic flight indicator, (i) pre-cleared flight indicator, (j) code share information, if applicable, and (k) flight routing. For each *departing* flight: (a) flight number and Airport Gate utilized, (b) aircraft registration number and aircraft type, (c) actual time of departure from Gate (aircraft pushback) and actual time of departure from Airport (wheels-off), (d) scheduled time of departure, (e) estimated time of departure, (f) aircraft parking position (g) code share information, if applicable, and (h) flight routing.

10.7.2 **Airline Reporting.** Airline shall provide to the City, on or before the 10th day of each and every month, the Monthly Activity Report. Each Monthly Activity Report shall be in a format prescribed by the City, and shall include at least the following information: (a) the aircraft make, model and series, MGLW, seating capacity and configuration of every aircraft type operated by Airline at the Airport during the preceding month listing arriving and departing aircraft separately; (b) the total MGLW of all passenger aircraft and, separately, all cargo aircraft landing at the Airport; (c) the total number of domestic and international enplaned and deplaned passengers served by Airline at the Airport, including the breakdown of FIS Facility and non-FIS Facility deplaned passengers, revenue and non-revenue passengers and enplaned passengers reported by Concourse; (d) the total amount (in pounds or kilograms) of domestic and international cargo and mail enplaned and deplaned by Airline at the Airport; (e) the total number of revenue and non-revenue aircraft operations; (f) total Airline use of Common Use Gates by date and time, including Gate, aircraft type and registration (tail) number; (g) total number of hours that Airline used each Common Use Ticket Counter; (h) total number of Airline's Turns, and (i) total number of Airline's Originating Bags.

10.7.3 **Failure to Report.** If Airline fails to provide to the City any Monthly Activity Report in a timely manner, Airline's Landing Fees, Terminal Building Charges and any other charges due under this Agreement shall be determined by assuming that Airline's activity in any month for which Airline has failed to report its activity equaled the Airline's maximum activity during any of the previous twelve (12) months for which Airline submitted a Monthly Activity Report to the City. Any necessary adjustments in the Airline's charges shall be calculated after Airline delivers to the City an accurate Monthly Activity Report for the month in question. Resulting credits or debits shall be applied to the appropriate invoices in the next billing period.

10.8 **Air Service Incentive Program.** Subject to applicable federal laws and policies, and in order to enhance existing air service or attract new air service to the Airport, the City reserves the right to adopt and implement one or more Air Service Incentive Programs. Each Air Service Incentive Program, if implemented, shall be offered to all eligible Air Carriers on a nondiscriminatory basis.

10.9 **Extraordinary Coverage Protection.** In addition to the Landing Fees and Terminal Building Charges otherwise established by this Article 10, Airline shall be required to make extraordinary coverage protection payments in any Fiscal Year in which the amount of Revenues (as defined in the Revenue Bond Order) less O&M Expenses is forecasted to be less than one hundred twenty-five percent (125%) of the Revenue Bond Debt Service or is otherwise insufficient to make any deposit required by the Revenue Bond Order. Any amounts that must be collected for such extraordinary coverage protection payments shall be allocated in a fair and not unjustly discriminatory manner to the Airfield Revenue Requirement or the Airline Terminal Revenue Requirement or both in the reasonable discretion of the Aviation Director. Should Extraordinary Coverage Protection payments be made in any given Fiscal Year, the City shall subsequently refund to Airline such payments made by Airline as soon as uncommitted funds become available in the Airport Discretionary Fund (as defined in the Revenue Bond Order).

Article 11

PAYMENTS

11.1 Payment of Landing Fees and Terminal Building Charges.

Beginning on the Effective Date, Airline shall pay to the City, on a monthly basis, Landing Fees and Terminal Building Charges calculated and invoiced by the City in accordance with Article 10 as follows:

11.1.1 Not later than the first (1st) day of each month of each Fiscal Year, Airline shall remit to the City the amount of Airline's Terminal Building Charges, other than the Inline Baggage Handling System Fees, based on the Terminal Rental Rate then in effect.

11.1.2 Not later than the tenth (10th) day of each month of each Fiscal Year, Airline shall remit to the City the amount of Airline's Landing Fees, together with Airline's Monthly Activity Report described in Section 10.7.2 on which Airline's payment under this Section 11.1.2 is based; provided, however, that the City reserves the right to use in the future an automated tracking system instead of Airline's Monthly Activity Report to determine the amount of Landing Fees due from Airline; and further provided, that if the City elects to use such an automated tracking system, the City shall consult with the AAAC and implement a reasonable method of reconciling the reports generated by the automated tracking system with Monthly Activity Reports submitted by each Air Carrier and resolving any discrepancies.

11.1.3 Within thirty (30) days of the date of the City's invoice setting forth the Airline's total Inline Baggage Handling System Fees for the preceding month, Airline shall remit to the City the amount so charged.

11.1.4 All amounts payable by Airline hereunder shall be paid to the City at the City's Post Office and Payment Address, or at such other place as the Aviation Director may from time to time designate in writing. The City shall give Airline written notice of any late payments, and any amount that is not paid within fifteen (15) days of Airline's receipt of such notice shall bear interest at a rate of one and one-half (1.5%) percent per month.

11.1.5 (a) Airline's payment to the City, and the City's acceptance from Airline, of any payment amount hereunder shall not preclude either Airline or the City from questioning, within six (6) months from the date of Airline's receipt of the Final Audit, the accuracy of any statement on the basis of which such payment was made, or preclude the City from making, within such period, any claim against Airline for any additional amount payable by Airline under this Agreement, or preclude Airline from making, within such period, any claim against the City for any credit for any excess amount paid by Airline under this Agreement; provided, however, that neither the City nor Airline shall be limited by such six-month period if the other party shall have attempted to defraud or shall have defrauded the party seeking to question the accuracy of such statement or make such claim.

(b) Notwithstanding the foregoing, Airline shall not abate, suspend, postpone, set-off, or discontinue any payments of Airport Fees and Charges that it is obligated to pay under this Agreement. Nothing contained in this Section 11.1.5 shall release the City from

the performance of any of its obligations under this Agreement. If the City fails to perform any of said obligations, Airline may institute such action against the City as Airline deems necessary to compel performance, so long as such action does not abrogate Airline's obligations to make payments of Airport Fees and Charges to the City unless a court of competent jurisdiction determines otherwise in a final, unappealable order, or in an order for which the time for appeal has elapsed and no appeal has been taken.

11.2 Passenger Facility Charges.

11.2.1 The City expressly reserves the right to impose and use PFCs in accordance with 49 U.S.C. § 40117 and the PFC Regulations. Nothing in this Agreement shall be interpreted to impair the City's right to impose or use a PFC or to impair Airline's rights to consultation under 49 U.S.C. § 40117 and the PFC Regulations.

11.2.2 Airline shall hold in trust for the City the net principal amount of all PFCs that are collected by Airline or its agents on behalf of the City pursuant to 49 U.S.C. § 40117 and the PFC Regulations. For purposes of this Section 11.2, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of the City, reduced by any amount that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations. PFCs collected by the Airline shall be remitted to the City at its Payment Address, or at such other place as the Aviation Director may from time to time designate in writing.

Article 12

AUDIT

12.1 **General.** Airline, at its expense and upon reasonable advance notice, shall have the right to inspect and audit the City's books, records and other data relating to Airport Fees and Charges charged to Airline under this Agreement, provided that such inspection and audit are made during the City's regular business hours.

12.2 **Books and Records of Airline.** Airline shall maintain separate and accurate daily records of Airline's operations at the Airport for a period of three (3) years after the close of each Fiscal Year throughout the Term. This record-keeping obligation shall survive the expiration or earlier termination of this Agreement. All such books and records shall be kept in accordance with generally accepted accounting principles, consistently applied, showing in detail all business done or transacted in, on, about, from or pertaining to the Airport, and shall be sufficient to permit the City to calculate and verify the Landing Fees, Terminal Building Charges and other fees and charges due under this Agreement. Upon the Aviation Director's written request, Airline shall make available to the City or its auditors any and all books, records and accounts pertaining to its operations under this Agreement. If the requested books, records and accounts are not made available at the Airport, and the City or its auditors are required to travel elsewhere to review them, the City may require that Airline reimburse the City for the reasonable costs of such review of Airline's books, records and accounts, provided that the City demonstrates an underpayment of five percent (5%) or more.

Article 13

AIRLINE'S REPRESENTATIONS AND WARRANTIES

Airline represents and warrants to the City that:

13.1 **Corporate Structure.** Airline (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, and (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement.

13.2 **Duly Authorized.** The execution, delivery and performance by Airline of this Agreement has been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of Airline's organization documents, or (b) conflict with or result in any breach or contravention of any contractual obligation to which Airline is a party, or any order, injunction, writ or decree of any governmental authority or any arbitral award to which Airline or its property is subject.

13.3 **Approvals Unnecessary.** Except as otherwise required pursuant to Section 13.5, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental authority or any other person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Airline of this Agreement.

13.4 **Duly Executed.** This Agreement has been duly executed and delivered by Airline. This Agreement constitutes a legal, valid and binding obligation of Airline, enforceable against Airline in accordance with its terms.

13.5 **No Bankruptcy or Insolvency.** On the date it becomes a Signatory Airline, either (a) Airline is not the subject of a case or proceeding described in Section 21.1.3 or (b) if Airline is the subject of a case or proceeding described in Section 21.1.3, Airline has obtained entry in such case or proceeding of a final order in form reasonably satisfactory to the City as to which the appeal period has expired authorizing Airline to execute, deliver and perform its obligations under this Agreement.

13.6 **Legal Proceedings.** There is no action, suit, proceeding or investigation at law or in equity before or by any court or public board or body pending or, to the knowledge of Airline, threatened against it, which, in Airline's opinion, is likely to materially adversely affect the financial condition of Airline or the transactions contemplated by this Agreement, or which in any way would adversely affect the validity of this Agreement.

13.7 **Compliance with Laws, Consents and Other Agreements.** (i) Airline is not in violation in any material respect of any term or provision of any mortgage, lease, agreement, or other instrument that is material to its business or assets, or of any judgment, decree, governmental order, statute, rule, or regulation by which it is bound or to which it or any of its assets is subject; and (ii) Airline's execution and delivery of this Agreement will not violate or constitute a material default of any term or provision of any mortgage, lease, agreement, or other instrument, or of any judgment, decree, governmental order, statute, rule, or regulation by which

Airline is bound or to which any of its assets is subject, except to the extent that any such violation or default described in clauses (i) or (ii) would not have a material adverse effect on the financial condition of Airline. No approval by, authorization of, or filing with any federal, state, or municipal or other governmental commission, board, or other governmental authority not obtained on or prior to the date hereof is necessary for the Airline's valid and proper execution and delivery of this Agreement.

Article 14

COMPLIANCE WITH LAWS

14.1 General Laws.

Airline shall comply with all Applicable Laws.

14.2 Airport Rules and Regulations.

Airline's use of the Premises and all other areas of the Airport shall be subject to the Airport Rules and Regulations. In the event of any conflict between this Agreement and the Airport Rules and Regulations, this Agreement shall control.

14.3 Licenses, Certificates and Authorizations.

Airline shall obtain all licenses, certificates, permits and other authorizations that are now or hereafter required by Applicable Laws or the Airport Rules and Regulations for Airline's operations at the Airport, Airline's use of the Premises and all other areas of the Airport, and Airline's exercise of any rights under this Agreement.

Article 15

INDEMNIFICATION AND INSURANCE

15.1 Indemnification.

15.1.1 Except for claims for environmental matters (which are the subject of the indemnification obligation under Section 23.7), Airline shall release, defend, indemnify, and hold the City, its directors, officers, employees, agents, contractors, consultants, representatives, anyone claiming by or through any of the aforesaid, any other Signatory Airline that accommodates Airline in the manner described in Section 4.11 or Section 5.2, and the successors and assigns of each (the City and each of the aforesaid, an "Indemnified Party") completely harmless from and against any and all claims, suits, demands, actions, liabilities, losses, damages, judgments, fines, or civil penalties arising, or alleged to have arisen, by reason of injury or death of any person, or damage to any property, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of the Airline's conduct of its air transportation business on or at the Airport or the use or occupancy of the Premises by the Airline, its directors, officers, agents, employees, contractors, consultants, representatives, or anyone else for whose acts the Airline is responsible, regardless of where the injury, death, or

damage may have occurred, except to the extent such injury, death, or damage is caused by the negligent act or omission or willful misconduct of the City.

15.1.2 Except for claims for environmental matters (which are the subject of the indemnification obligation under Section 23.7), Airline shall release, defend, indemnify, and hold each Indemnified Party completely harmless from and against any claims, suits, demands, actions, liabilities, losses, damages, judgments, fines or civil penalties, and all costs and expenses of whatever kind or nature (including, but not limited to, attorneys' fees, court costs, and expert fees) associated therewith in any way and to the extent arising from or based upon the actual or alleged violation by Airline, its agents, employees, contractors, consultants, or anyone else for whose acts the Airline is responsible, of any Applicable Laws, Airport Rules and Regulations, or any license, certificate, permit or other authorization issued under any of the aforesaid, in connection with the Airline's conduct of its air transportation business on or at the Airport or use or occupancy of the Airport.

15.1.3 If the City is alleged to be in non-compliance with Applicable Laws governing access to secure areas of the Airport or to the areas of the Airfield, and said non-compliance is the result of or due to the negligence or willful act or omission of the Airline or any of the Airline's officers, directors, employees, agents, contractors, consultants, representatives, or anyone else for whose acts the Airline is responsible, and such breach of a secure area results in a civil penalty or other action against the City, the Airline agrees to reimburse the City for all expenses, including reasonable attorneys' fees, incurred by the City in defending against the civil penalty action or other action, and for any civil penalty or settlement amount paid by the City as a result of being deemed in non-compliance as aforesaid. The City shall give the Airline reasonable notice of any allegation, investigation, or proposed or actual civil penalty or other action sought for such non-compliance.

15.1.4 If any action or proceeding is brought against the City by reason of any claim, suit, demand, action, liability, loss, damage, judgment, fine, or penalty that may be subject to Airline's indemnification obligations contained in this Section 15.1, Airline, upon reasonable notice from the City, shall resist or defend such claim, suit, demand, action, liability, loss, damage, judgment, fine, or penalty with counsel reasonably acceptable to the City, and the City shall take reasonable actions to mitigate its damages.

15.1.5 The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City or an Indemnified Party that would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement. The City shall give Airline written notice of any claims threatened or made or any suit instituted against it that could result in a claim of indemnification hereunder.

15.1.6 Notwithstanding anything to the contrary set forth in this Agreement, neither party nor any of its members, directors, officers, agents, representatives or employees shall be liable to the other party for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Agreement or such party's performance or non-performance hereunder; provided, however, that this Section 15.1.6 shall not

apply to third-party claims for bodily injury, wrongful death or property damage arising out of or relating to this Agreement.

15.1.7 The indemnification and other obligations under this Section 15.1 shall survive expiration or earlier termination of this Agreement.

15.2 Airline’s Insurance.

15.2.1 During the Term, and for such longer periods required under this Agreement, Airline shall provide to the City at the address set forth in Section 1.1, pay for and maintain with companies reasonably satisfactory to the City the following insurance coverages without interruption:

(a) Aircraft Liability Insurance and Commercial General Liability Insurance. Aircraft Liability Insurance and Commercial General Liability Insurance shall be maintained by Airline during the Term, and for such longer periods as described in Section 15.2.6. Coverage shall include, but not be limited to, Premises and Operations, Personal and Advertising Injury, Contractual Liability, Hangarkeepers’ Legal Liability, Additional Insured endorsement (noted below), Aircraft Liability (including Passenger Liability), Passenger Checked and Unchecked Baggage Liability, Bodily Injury and Property Damage to Third Parties, Independent Contractors, Broad Form Property Damage, Products and Completed Operations Coverage and shall include Explosion (XCU), Collapse, Liquor Liability, Terrorism or War Risk. The limits of coverage shall not be less than (with the exception of industry standard Airline Liability sublimits):

- (i) Passenger Airlines with 20 seats or less. Comprehensive
Airline Liability - \$50,000,000
- (ii) Passenger Airlines with 21 to 60 seats. Comprehensive
Airline Liability - \$100,000,000
- (iii) Passenger Airlines with 60 seats or more. Comprehensive
Airline Liability - \$200,000,000
- (iv) Cargo Legal Liability with less than 60,000 lbs. -
\$50,000,000
- (v) Cargo Legal Liability with more than 60,000 lbs. -
\$200,000,000

The Aircraft Liability Insurance and Commercial General Liability Insurance required hereunder shall also include coverage applicable to mobile and other ground vehicle equipment operated on those parts of the Airport that are not accessible to the public and are designated as restricted areas with a limit of not less than \$25,000,000 for each occurrence, and hereafter in such increased amounts or on such revised terms and conditions as the City may from time to time specify. Mobile and other ground vehicle equipment shall include, but not be limited to, baggage, tugs, aircraft pushback tugs, provisioning trucks, air stair trucks, belt loaders, and owned, non-owned and hired automobiles.

Airline's Aircraft Liability Insurance and Commercial General Liability Insurance shall be placed with one or more companies with an AM Best rating of A- or better, and a financial size rating of IV or better (or equivalent S&P rating, or its equivalent as determined by the City). The City shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent endorsement acceptable to the City), and shall be furnished with appropriate written evidence to establish that Airline's insurance coverages required by this Subsection (a) have been met. The inclusion of the City as an additional insured shall not create any premium liability for the City. The liability insurance required by this Subsection (a) shall not contain a deductible or self-insured retention in excess of \$1,000,000 (unless otherwise approved in writing by the City). All deductibles and self-insured retentions shall be paid by Airline and assumed for the account of Airline, at Airline's sole risk. To the extent that Airline relies on excess or "umbrella" policy of insurance to satisfy the requirements of this Subsection (a), any such policy shall be no less broad than the underlying policy, shall cover the term of the underlying policy without interruption, and shall include a drop-down provision.

(b) Automobile Liability Insurance (non-restricted areas of the Airport). Commercial automobile liability insurance covering all owned, non-owned and hired automobiles and other mobile and other ground vehicle equipment (as defined in Subsection (a), above) operated on non-restricted areas of the Airport in the minimum single limit of \$1,000,000, and hereafter in such increased amounts or on such revised terms and conditions as the City may from time to time specify. The liability insurance required by this Subsection (b) shall not contain a deductible or self-insured retention in excess of \$1,000,000 (unless otherwise approved in writing by the City). All deductibles and self-insured retentions shall be paid by Airline and assumed for the account of Airline, at Airline's sole risk. To the extent that Airline relies on an excess or "umbrella" policy of insurance to satisfy the requirements of this Subsection (b), any such policy shall be no less broad than the underlying policy, shall cover the term of the underlying policy without interruption, and shall include a drop-down provision.

(c) Environmental Liability Insurance. Coverage shall be maintained by the Airline in an amount not less than \$10,000,000 for sudden and accidental pollution, and clean-up costs, to the extent required by Applicable Laws, arising out of Airline's activities under this Agreement, and hereafter in such increased amounts or on such revised terms and conditions as the City may from time to time specify. Airline may provide for reasonable limits of self-insurance against environmental liability risks in lieu of obtaining coverage from a third-party insurer. All amounts paid to the City by Airline on account of any self-insurance program shall be deemed insurance proceeds for purposes of this Agreement. To the extent Airline self-insures as to environmental liability, the protections afforded the City by Airline shall be the same as if insurance were provided by a third-party insurer on commonly available, commercially reasonable terms for such insurance based on Airline's activities under this Agreement, and Airline shall have all the obligations and liabilities of a third-party insurer hereunder (e.g., obligation to provide a defense for covered claims).

(d) Liquor Liability Insurance. If Airline serves or sells alcoholic beverages at its VIP Lounge or any other facility on or about the Premises, Airline shall maintain liquor law liability insurance (on an occurrence basis) with limits of liability of \$5,000,000 per occurrence, \$25,000,000 in the aggregate, and hereafter in such increased amounts or on such revised terms and conditions as the City may from time to time specify. The City shall be named

as an additional insured using an appropriate policy form or endorsement, and shall be furnished with appropriate written evidence to establish that Airline's insurance coverages required by this Subsection (d) have been met. The inclusion of the City as an additional insured shall not create any premium liability for the City. The liability insurance required by this Section shall not contain a deductible or self-insured retention in excess of \$1,000,000 (unless otherwise approved in writing by the City). All deductibles and self-insured retentions shall be paid by Airline and assumed for the account of Airline, at Airline's sole risk. To the extent that Airline relies on excess or "umbrella" policy of insurance to satisfy the requirements of this Subsection (d), any such policy shall be no less broad than the underlying policy, shall cover the term of the underlying policy without interruption, and shall include a drop-down provision.

(e) Workers' Compensation and Employer's Liability Insurance.

Workers' compensation insurance as required by Applicable Laws, and employers' liability insurance with minimum limits of \$100,000 per accident, \$500,000 disease per policy, \$100,000 disease per policy. Airline shall require all of its contractors and consultants to carry workers' compensation insurance as required by Applicable Laws.

(f) Property Insurance. Property insurance, naming the City as a loss

payee and the Airline as their respective interests may appear, insuring (i) that portion of the Premises that the Airline is required to maintain under this Agreement and (ii) any personal property at the Premises (including without limitation, inventory, trade fixtures, floor coverings, furniture, improvements and other personal property) against the perils of fire (with extended coverage) and physical loss or damage. Such insurance shall be in an amount equal to the full replacement cost of the insured property.

(g) Other Insurance. Airline shall also obtain all other forms of

insurance required for its particular use of the Airport, and as required under Applicable Laws or Airport Rules and Regulations.

15.2.2 Termination, Renewal and Additional Insurance. Airline shall use commercially reasonable efforts to ensure that no policy of insurance required of Airline under this Agreement shall be cancellable or subject to non-renewal or adverse, material modification except after thirty (30) days' prior written notice to the City. Airline shall, in a timely manner prior to the expiration, cancellation, non-renewal or modification of such policies, furnish the City with evidence of renewals or insurance binders that evidence the renewal thereof. In the event of cancellation of any insurance required of the Airline at any time during the Term, or any change not reasonably acceptable to the City, including an erosion in available limits below those specified in this Article 15, the City reserves the right, after consultation with Airline, to provide additional insurance and charge the cost of any premiums for such coverage to Airline. The City's right under this Section 15.2.2 includes, but is not limited to, the City's right to purchase higher limits for its own insurance program to account for an erosion in Airline's limits.

15.2.3 No Representation of Adequacy. The City makes no representation that the limits or forms of insurance coverage specified or required under this Agreement are adequate to cover Airline's property or Airline's liabilities or obligations under this Agreement.

15.2.4 City's Right to Request Information from Airline's Insurance Company.

If the City requests a written statement from Airline's insurance company regarding any impairments to Airline's aggregate limit(s), Airline shall promptly authorize and have delivered such statement to the City. Airline authorizes the City and its insurance consultant to confirm with Airline's insurance agents and brokers all information furnished to the City regarding Airline's compliance with the insurance requirements under this Agreement.

15.2.5 Primary Coverage. All insurance policies required of Airline under this

Agreement shall be endorsed to state that Airline's policy is primary and not contributory with any insurance carried by the City.

15.2.6 Duration of Insurance Obligations. Airline shall maintain its aircraft

liability insurance, commercial general liability insurance, automobile liability insurance, and liquor liability insurance required under this Article 15 in force and effect at all times during the Term, and for a period of two (2) years after the expiration or earlier termination of this Agreement. Any insurance coverage that is written on a claims-made basis must remain in force for two (2) years after the expiration or earlier termination of this Agreement.

15.2.7 Amounts of Coverage. All requested insurance limit amounts must be in

U.S. dollars.

15.3 City's Insurance.

15.3.1 Commercial General Liability Insurance. The City shall maintain in

force during the Term commercial general liability insurance covering bodily injury, property damage and contractual liability arising out of the ownership, maintenance, use and occupancy of the Airport with coverage limits to be determined by the City.

15.3.2 Property Insurance. The City shall maintain in force during the Term

property insurance against the perils of fire (with extended coverage) and physical loss or damage, including theft, vandalism and malicious mischief, of the Terminal Complex, any additions, alterations and modifications thereto, and all personal property owned by the City and located at, on, or in the Airport or the Terminal Complex. Such insurance shall be in an amount of not less than ninety percent (90%) of the full replacement cost of the insured property.

15.3.3 City's Certificates of Insurance. The City, upon Airline's reasonable

request, shall furnish to Airline one or more certificates of insurance evidencing the coverages required under this Section 15.3.

Article 16

WAIVER OF SUBROGATION

The City and Airline (for themselves and on behalf of anyone claiming through or under them by way of subrogation or otherwise) hereby release each other from liability and waive all right of recovery against each other for any loss to real or personal property located anywhere on or about the Airport from perils which can be insured against under a standard form commercial property or fire insurance policy with extended perils coverage endorsements generally available

in North Carolina at the time the loss occurs. The effect of the release and waiver of the right to recover damages shall not be limited by whether the party incurring the loss has actually obtained such insurance, by the amount of insurance carried, or by any deductibles applicable thereto. If a party's applicable insurance policies do not allow the insured to waive the insurer's right to recovery, the party shall cause each insurance policy to be endorsed to allow the waiver of subrogation required by this Article 16.

Article 17

INCREASE IN COST OF INSURANCE

Airline shall not use the Premises in any manner not contemplated by this Agreement so as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If Airline shall do so, then, at the City's option, the full amount of any resulting increase in premiums paid by the City with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term, shall be paid by Airline to the City. Conversely, the City shall not use the Public Areas in any manner not contemplated by this Agreement so as to increase the existing rates of insurance applicable to the Airline's Premises. If the City shall do so, then, at the option of the Airline, the full amount of any resulting increase in premiums paid by the Airline with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the Term, shall be paid by the City to the Airline.

Article 18

NON-DISCRIMINATION AND AFFIRMATIVE ACTION

18.1 **Non-Discrimination.** Airline acknowledges that the City has given to the United States of America, acting by and through the FAA, certain assurances with respect to non-discrimination required by Title VI of the Civil Rights Act 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252), 49 CFR Part 21, 49 CFR § 47123, 28 CFR § 50.3 and other acts and regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation ("DOT") (collectively, and including all amendments thereto, the "Acts and Regulations") as a condition precedent to receiving Federal financial assistance from FAA for certain Airport programs and activities. The City is required under the Acts and Regulations to include in this Agreement, and Airline agrees to be bound by, the following covenants and requirements:

(a) Airline, for itself, its assignees and successors in interest, covenants and agrees that it shall assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA. In the event of Airline's breach of any of the above Non-discrimination covenants, the City shall have the right to terminate this Agreement.

(b) Airline, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a

covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations such that no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities.

(c) In the event of Airline's breach of any of the Non-discrimination covenants described in subsection (b), above, the City shall have the right to terminate this Agreement, and to enter, re-enter and repossess the Premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This subparagraph (c) shall not become effective until the procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

(d) Airline, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that (i) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be 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 shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (iii) Airline shall use the Premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

(e) In the event of Airline's breach of any of the Non-discrimination covenants described in subsection (d), above, the City shall have the right to terminate this Agreement, and to enter or re-enter and repossess the Premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This subparagraph (e) shall not become effective until the applicable procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

(f) Airline shall include these subsections (a) through (f), inclusive, in Airline's licenses, permits and other instruments relating to the Premises, and shall require that its licensees, permittees and others similarly include these statements in their licenses, permits and other instruments relating to the Premises.

18.2 Affirmative Action. Airline assures that: (a) it shall undertake an affirmative action program as required by the City, and by all federal and state laws, rules and regulations pertaining to Civil Rights (and any and all amendments thereto), including, without limitation, 49 CFR Part 21 and 49 U.S.C. § 47123, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the benefits of the program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA, or in subjecting them to

discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section 18.2 in Airline's contracts and other applicable documents under this Agreement, and shall require that its contractors and others similarly include these statements in their subcontracts and applicable documents.

Article 19

ASSIGNMENT AND SUBLETTING

Airline shall not assign or transfer this Agreement or any interest therein, or sublet the whole or any portion of the Premises, without first obtaining the City's prior written consent, which consent shall not be unreasonably withheld. Airline further agrees that this Agreement or any interest therein shall not be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the City's prior written consent, which consent shall not be unreasonably withheld. Airline further agrees that, if at any time during the Term, more than one-half (1/2) of the outstanding shares of any class of stock of Airline's corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Agreement or to members of their immediate families, such change in ownership of Airline's stock shall be deemed an assignment of this Agreement within the meaning of this Article 19 (unless Airline is a corporation whose stock is listed on the New York Stock Exchange or other major stock exchange, in which case such an event shall not be deemed an assignment of this Agreement). Airline may assign or transfer this Agreement in its entirety without the City's consent to any successor-in-interest of Airline with which Airline may merge, or into which Airline may be consolidated, or which may acquire all or substantially all of Airline's assets; provided that such successor-in-interest shall provide to the City, within thirty (30) days after the effective date of such merger, consolidation, or acquisition, written confirmation (in form and substance satisfactory to the City in its sole discretion) that such successor-in-interest has assumed all of Airline's obligations under this Agreement. Airline's entering into any operating agreement, license, or other agreement under which a third party, other than an Affiliate of Airline, is given rights or privileges to utilize portions of the Premises shall be considered an attempted assignment or subletting within the meaning of this Article 19.

This Article 19 shall not apply to any valid assumption or assignment of this Agreement, the Premises, or any part thereof, by a trustee, or by Airline as a debtor-in-possession under Section 365 of the Bankruptcy Code of 1978, as amended, if adequate assurance of future performance under said Section 365 is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include, without limitation:

- (a) Adequate assurance of the reliability of the proposed source for the Airport Fees and Charges due under this Agreement upon the assumption or assignment of this Agreement; and
- (b) Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and

(c) The procurement of a performance bond from a financially reputable surety in the amount of the Airport Fees and Charges allocated to the Premises in the Fiscal Year prior to the year in which the assignment occurs to cover any costs or damages incurred by the City if the City, within five (5) years following the assumption or assignment of this Agreement, becomes entitled to any damages by reason of the breach of this Agreement.

Article 20

SECURITY DEPOSIT

If, at any time during the Term, Airline shall commit an Event of Default (other than under Section 21.1.5) that is not fully cured in accordance with the applicable provisions of this Agreement, the City shall have the right to immediately impose the Security Deposit requirements of this Article 20, and shall provide Airline with written notice thereof. In such event, Airline shall obtain and deliver to the City's Post Office and Payment Address, a Security Deposit equal to three (3) months of Landing Fees and Terminal Building Charges as estimated by the City to secure Airline's obligations under this Agreement. The amount of the Security Deposit may be adjusted from time to time by the City to reflect changes in Airline's financial obligations to the City under this Agreement. The amount, form, provisions and nature of the Security Deposit, including if appropriate the identity of the surety or other obligor thereunder, shall at all times be subject to the City's approval. The Security Deposit shall be made by letter of credit, surety bond or other instrument acceptable to the City no later than ten (10) calendar days after Airline's receipt of the City's notice imposing the Security Deposit requirement, and shall remain in place at all times throughout the Term and throughout any holdover period. The City shall not pay interest on the Security Deposit, and the City shall not be required to keep the Security Deposit separate from its other accounts. No trust relationship is created with respect to the Security Deposit. Airline shall maintain such Security Deposit for the remainder of the Term. If Airline's Security Deposit is in the form of a letter of credit, and unless said letter of credit is automatically renewing, Airline shall, at least thirty (30) days prior to the maturity date of the letter of credit (or any replacement letter of credit) then held by the City, deliver to the City a replacement letter of credit that has a maturity date no earlier than the next anniversary of the Effective Date or one (1) year from its date of delivery to the City, whichever is later.

The City may apply all or part of the Security Deposit to any unpaid sums due under this Agreement or to cure the existing or other Events of Default. If the City depletes the Security Deposit in this way, Airline shall restore the Security Deposit within ten (10) days after the Airline's receipt of the City's written request to do so. Notwithstanding the foregoing, if the City depletes the Security Deposit and any unpaid sum remains due under this Agreement, the City shall have the right to recover the total of such unpaid sum through the fees and charges mechanism set forth in Article 10; provided, however, that this shall not release nor in any way affect Airline's liability for such unpaid sums.

If there is no Event of Default and no event which, with the passage of time or the giving of notice, would constitute an Event of Default, for one (1) year after Airline's delivery of the Security Deposit to the City or Airline's complete cure of an immediately preceding Event of Default, whichever date is later, and further provided that there is no material adverse change in Airline's net worth on that date, as verified by the City based upon a certificate from Airline's

chief financial officer and audited financials, then the remaining proceeds of the cash Security Deposit or the letter of credit, as applicable, shall be returned to Airline within thirty (30) days after such date; provided, however, that the City shall have the right to impose the Security Deposit requirements of this Article 20 on Airline if Airline subsequently commits an Event of Default that is not fully cured in accordance with the applicable provisions of this Agreement.

Should Airline comply with all of the terms, covenants and conditions of this Agreement and promptly pay all sums payable by Airline to the City hereunder, the Security Deposit or the remaining proceeds therefrom, as applicable, shall be returned to Airline within thirty (30) days after the expiration of the Term, less any portion thereof that may have been used by the City to cure an Event of Default. The City's rights under this Article 20 shall be in addition to all other rights and remedies provided to the City under this Agreement or by Applicable Laws.

Article 21

TERMINATION

21.1 **Airline Default.** The occurrence of any one or more of the following events shall constitute an Event of Default under this Agreement:

21.1.1 Airline shall fail duly and timely to pay any Landing Fees, Terminal Building Charges, or any other fee or charge due under this Agreement when due to the City, and such failure shall continue for five (5) days beyond Airline's receipt of a written notice of such breach or default from the Aviation Director. Notwithstanding the foregoing, if there occur two (2) defaults in the payment of Landing Fees, Terminal Building Charges, or other fee or charge due under this Agreement in any twelve (12) month period, thereafter Airline shall not be entitled to notice of any further payment defaults (*i.e.*, thereafter Airline's failure to pay Landing Fees, Terminal Building Charges, or other fee or charge due under this Agreement in a timely manner shall be deemed an Event of Default), and the City shall have no obligation to give such notice.

21.1.2 Airline shall fail duly and timely to remit to the City PFCs collected by Airline from its passengers in accordance with the PFC Regulations.

21.1.3 Airline shall become insolvent, take the benefit of any present or future insolvency statute, make a general assignment for the benefit of creditors, file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property, or petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute shall be filed against Airline and shall not be dismissed within ninety (90) days after the filing thereof.

21.1.4 There shall occur an assignment or transfer subject to Article 19 without the City's prior written consent.

21.1.5 Airline shall abandon the Premises and its conduct of business at the Airport, and, in this connection, suspension of operations for a period of sixty (60) days shall be

considered abandonment in the absence of a labor dispute or other governmental action in which Airline is directly involved.

21.1.6 Any lien shall be filed against the Premises as a result of an act or omission of Airline, and shall not be discharged within sixty (60) days after Airline's receipt of notice.

21.1.7 Airline shall fail to obtain and maintain the insurance required by Section 15.2, or provide copies of the policies or certificates (including without limitation those related to renewals of such coverages) to the City as required.

21.1.8 Airline shall fail to keep, perform and observe each and every other promise, representation, covenant and agreement set forth in this Agreement, and such failure shall continue for a period of more than five (5) days after the Aviation Director's delivery of written notice of such failure or, if satisfaction of such obligation requires activity over a period of time, if Airline fails to commence the cure of such failure within five (5) days after Airline's receipt of such notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within sixty (60) days of the Aviation Director's delivery of such notice.

21.2 City's Remedies.

21.2.1 General Remedies – Applicable to All Portions of the Premises.

(a) Whenever any Event of Default shall occur (other than a default pursuant to Subsection 21.1.3 upon which termination of this Agreement, at the City's option, shall be effective immediately without further notice), this Agreement and all of Airline's rights hereunder shall terminate if the written notice of default so provides. The City shall be entitled to recover Termination Damages from Airline, together with interest on all Termination Damages at the rate of 18% per annum, or the maximum rate permitted by Applicable Laws, whichever is lower, from the date such Termination Damages are incurred by the City.

(b) In addition to Termination Damages, and notwithstanding termination, Airline's liability for Future Charges shall not be extinguished, and Airline agrees that the City shall be entitled, upon termination for default, to collect as additional damages a Rental Deficiency so long as the City is using commercially reasonable efforts to mitigate its damages; provided, however, that the obligation of the City to use commercially reasonable efforts to mitigate its damages shall not be construed to require the City to rent all or any portion of the Premises for a use or to a tenant that is not consistent with this Agreement or the City's current or future business needs or requirements for the Airport, or to prioritize the renting of all or any portion of the Premises over other space that the City may have available at the Airport. As used in this Section 21.2.1, a "Rental Deficiency" shall mean: an amount or amounts equal to Future Charges less the amount or amounts of rental, if any, that the City shall actually receive during the remainder of the Term from others to whom the Premises may be rented, in which case such Rental Deficiency shall be computed and payable at the City's option either: (i) in an accelerated lump sum payment or (ii) in monthly installments, in advance, on the first day of each calendar month following termination of the Agreement, and continuing until the date on which the Term would have expired but for such termination. Any suit or action brought to

collect any portion of Rental Deficiency attributable to any particular month or months shall not in any manner prejudice the City's right to collect any portion of Rental Deficiency by a similar proceeding.

(c) If such default relates to Airline's Exclusive Use or Preferential Use Premises, the City may re-enter the Exclusive Use Premises and Preferential Use Premises upon termination, take exclusive possession of any such Exclusive Use Premises and Preferential Use Premises, and remove all persons and property therefrom without the City being liable to Airline for damage or loss thereby sustained by Airline. The City shall be entitled to recover from Airline, in addition to Termination Damages and Rental Deficiency, Additional Termination Damages, together with interest on all Additional Termination Damages at the rate of 18% per annum, or the maximum rate permitted by Applicable Laws, whichever is lower, from the date such Additional Termination Damages are incurred by the City. Airline shall have no right to or claim upon any improvements that may have been previously installed by Airline in or on the Exclusive Use or the Preferential Use Premises.

(d) If this Agreement terminates as a result of Airline's default, the City shall use commercially reasonable efforts (as described in Section 21.2.1(b)) to relet the Exclusive Use and Preferential Use Premises or any part thereof, alone or together with other Exclusive Use and Preferential Use Premises, for such term or terms and for such use or uses as the City in its sole discretion may determine. Airline's obligations hereunder shall not be discharged by reason or failure of City to relet the Exclusive Use or Preferential Use Premises; .

(e) Except as specifically provided in Section 15.1.6, the City's action pursuant to this Section 21.2.1 shall not in any way limit the City in the pursuit of any other additional right or remedy available to the City in law or in equity by reason of Airline's default.

21.3 City Default. The City shall in no event be in default in the performance of any of the City's obligations hereunder unless and until the City shall have failed to perform such obligations within thirty (30) days after written notice from Airline to the City, properly specifying the City's failure to perform any such obligation (unless such default is of a nature that it cannot be cured within such thirty-day period, in which case no default shall occur so long as the City commences curing the default within the thirty-day period and promptly prosecutes curing the same). In no event shall the City ever be liable to Airline for indirect or consequential damages.

If Airline shall claim under any provision of this Agreement that the City has unreasonably withheld or delayed its consent or approval to some request of Airline, Airline shall have no claim for damages by reason of such alleged withholding or delay, and Airline's sole remedy therefor shall be declaratory or injunctive relief, but in any event without any recovery of damages from the City.

21.4 Termination. This Agreement may be terminated in advance of its Expiration Date in the following events:

21.4.1 If the City, in its sole discretion, shall require the use of the Premises or any substantial portion thereof for a major capital improvement for public or private use in

connection with the City's business, the City may terminate this Agreement by written notice delivered or mailed by the City to Airline not less than one (1) year before the termination date specified in the notice; provided, however, that if this Agreement is terminated under this Section 21.4.1, the City shall reimburse Airline for the unamortized costs of any improvements to the Terminal Building constructed by Airline with the City's consent during the Term; and provided further that the costs of any such improvements shall be amortized on such reasonable basis as the City may specify in writing when the City's consent for the improvements was given to Airline, unless the City has previously reimbursed Airline for the costs of such improvements; or

21.4.2 If any federal, state or local government, or agency or instrumentality thereof, shall, by condemnation or deed or conveyance in lieu thereof, take title, possession, or the right to possession of the Premises or any substantial portion thereof, the City may, at its option, terminate this Agreement as of the date of such taking; or

21.4.3 If any court having jurisdiction shall render a decision that has become final and will permanently or for a substantial period of time prevent the City's performance of any of its material obligations under this Agreement, either party hereto may terminate this Agreement by written notice. This right of termination shall be and remain effective whether or not the City, by taking affirmative action or by inaction, could have prevented the rendering of the decision, or could have caused the decision to be vacated before it became final.

21.4.4 If this Agreement is terminated under Sections 21.4.1 through 21.4.3, and Airline is not in default under this Agreement upon the City's issuance of its written notice of termination, the City shall make reasonable efforts to provide to Airline reasonable substitute space in place of the Premises affected by the termination (to the extent such space is available) not less than sixty (60) days prior to the effective date of termination stated in the City's notice of termination (if such time period is consistent with the governmental actions described in Sections 21.4.2 and 21.4.3). If Airline accepts all or any portion of such space, Airline shall complete its relocation as expeditiously as possible, but in no event later than the effective date of termination stated in the City's notice of termination, and shall otherwise comply with the City's relocation requirements and the Airport Rules and Regulations. The City shall revise the Premises Notice issued to the Airline to reflect the change in the Premises as a result of the Airline's relocation as aforesaid, and shall issue said revised Premises Notice to the Airline promptly after said relocation.

21.4.5 If this Agreement is terminated under Sections 21.4.1 through 21.4.3, and Airline elects not to accept from the City the substitute space described in Section 21.4.4, all rights and obligations of the parties shall terminate (with the exception of (i) any undischarged rights and obligations that accrued prior to the effective date of such termination and (ii) any rights and obligations that this Agreement states shall survive such termination), and if Airline is not in default under this Agreement on the effective date of termination, any Airport Fees and Charges prepaid by Airline shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Airline.

21.5 City's Right to Partial Termination. If the City determines, in its sole discretion, that Airport operations or Capital Improvement Project development requires the use of all or a portion of Airline's Exclusive Use Premises, the City shall provide Airline with one

hundred twenty (120) days' notice of termination of the required Exclusive Use Premises. If Airline is required to move pursuant to this Section 21.5, the City shall relocate Airline to Exclusive Use Premises that are reasonably similar to those previously occupied by Airline, and shall pay for all reasonable costs of such relocation, which shall be recoverable under Article 10.

21.6 City's Right to Perform. All agreements and obligations to be performed by Airline under this Agreement shall be at Airline's sole cost and expense and without any abatement of Terminal Building Charges or Landing Fees. If Airline shall fail to make any payment or perform any act required to be performed under this Agreement, and such failure shall continue for ten (10) days after City's notice thereof, the City may, but shall not be obligated to, and without waiving or releasing Airline from any of its obligations, make any such payment or perform any such act on Airline's behalf. All sums so paid by the City and all necessary incidental costs shall be deemed additional Airport Fees and Charges hereunder, payable to the City on demand, and the City shall have (in addition to any other right or remedy of the City) the same rights and remedies in the event of the nonpayment thereof by Airline as in the case of Airline's default in the payment of Terminal Building Charges or Landing Fees.

21.7 Airline's Rights Related to Termination. In the event of any termination based on any breach of the covenants, terms and conditions contained in this Agreement, all of Airline's rights, powers and privileges under this Agreement shall cease, and Airline shall immediately vacate any portions of the Premises it occupies under this Agreement. Airline shall have no claim of any kind whatsoever against the City by reason of such termination, or by reason of any act by the City related to such termination.

Article 22

SURRENDER OF POSSESSION; HOLDING OVER

22.1 Surrender. Airline covenants and agrees to surrender possession of the Premises upon (a) termination of this Agreement; (b) partial termination of Premises under Section 21.5; (c) the effective date of the City's reallocation or recapture of all or any portion of the Premises under Article 4; (d) termination of any holdover period; or (e) expiration of the Term in as good condition as on the Effective Date (or in the case of improvements or alterations made or fixtures installed subsequent thereto, then as of the date of such improvements, alternations, or fixtures were made or installed), reasonable wear and tear, and damage from casualty as described in Section 9.5 resulting in the termination of this Agreement, and repairs that are the responsibility of the City, excepted. No act or thing done by the City during the Term shall be deemed acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing and signed by the City.

If, upon such expiration or earlier termination, Airline shall fail to remove any personal property or trade fixtures (which Airline is allowed under the terms hereof to remove) on or before the date of termination, the City may, but without the obligation to do so, remove said personal property and trade fixtures and hold them for the owners thereof, or may place the same in a public warehouse, all at the expense and risk of the owners thereof. Airline shall reimburse the City for any reasonable expense incurred by the City in connection with such removal and storage. In addition, the City shall have the right, but not the obligation, to dispose of such

property as waste, or sell such stored property and the proceeds of such sale shall be applied; first, to the cost of the sale; second, to the payment of charges for storage and removal; third, to the payment of Airport Fees and Charges or any other obligation that may then be due from Airline to the City; and the remaining balance, if any, shall be paid to the City. If the expenses of such removal, storage, disposal and sale shall exceed the proceeds of sale, Airline shall pay such excess to the City upon demand. Airline shall indemnify, defend, release and hold harmless the City from any and all damage, cost and expenses related to said removal, storage, disposal and sale, which obligations shall survive expiration or earlier termination of this Agreement.

22.2 Holding Over. If Airline holds over, refuses, or fails to give up the possession of the Premises or the relevant portion thereof, as applicable, on the applicable date described in Section 22.1 without express written consent of the City, Airline shall have only the status of a tenant at sufferance and no periodic tenancy will be deemed to have been created. At all times during the holdover period, Airline shall pay the Airport Fees and Charges required under this Agreement. Notwithstanding anything set forth in this Agreement to the contrary, Airline shall not be entitled to the sharing of Net Remaining Terminal Complex Revenue described in Section 10.7 during any holdover period. Furthermore, if the City so elects, the City may accept Airport Fees and Charges from Airline and concurrently commence legal proceedings to regain possession of the Premises. The foregoing provisions shall not serve as permission to Airline to hold over, nor serve to extend the Term (although Airline shall remain bound to comply with all provisions of this Agreement until Airline vacates the Premises). The provisions of this Section 22.2 shall not operate as a waiver of any right of the City under this Agreement or Applicable Laws to re-enter and take possession of the Premises. If, during Airline's holdover period, Airline and the City execute a new use and lease agreement applicable to the Premises, the City may elect, in its sole discretion, to have the terms and conditions of such new use and lease agreement apply retroactively to Airline's use and occupancy of the Premises during said holdover period.

Article 23

ENVIRONMENTAL MATTERS

23.1 Definitions. For purposes of this Article 23, the following terms shall have the following meanings:

23.1.1 "Environmental Law" means any state or federal law, regulation, ordinance, permit or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect, that pertains to the environment.

23.1.2 "Hazardous Substances" means any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant by any Environmental Law.

23.1.3 "Release" means any spilling, leaking, pumping, pouring, emitting, discharging, leaching, dumping or disposing into or on any property or the environment. Petroleum spills of less than five (5) gallons are excluded unless water or soil is impacted.

23.2 Restriction on Hazardous Substances. Airline shall not allow (a) any Release by Airline (or its agents or invitees) on the Airport of any Hazardous Substances in violation of any Environmental Law, or (b) any Hazardous Substances Released by Airline (or its agents or invitees) to migrate off the Airport or into surface waters, soils, underground waters, or air adjacent to the Airport in violation of any Environmental Law; provided, however, that Airline shall not be liable for any pre-existing Hazardous Substances contamination that Airline can demonstrate was not caused by Airline (or its agents or invitees). Upon the City's reasonable written request, Airline shall provide to the City Airline's USEPA Waste Generator Number unless Airline is a Conditionally Exempt Small Quantity Generator (CESQG). Airline shall promptly notify the City in writing when Airline becomes aware of: (1) any Release of any Hazardous Substances by Airline (or its agents or invitees) at, on, or from the Premises or the Airport, or the occurrence of any other environmental problem or liability affecting the Premises or the Airport; (2) any notice given to Airline by any third party regarding any Release or threat of Release of any Hazardous Substances at, on, or from the Premises or the Airport; or (3) the commencement of any litigation against Airline or any notice given to Airline of any threat of litigation relating to any alleged unauthorized Release of any Hazardous Substances or other environmental contamination, liability, or problem relating to Airline's operations at the Airport.

23.3 Compliance and Remediation. Airline shall at all times conduct its business at the Airport in compliance with all applicable Environmental Laws. If Airline or the Premises is in violation of any Environmental Law concerning the presence, use, Release or threat of Release of Hazardous Substances or any other Environmental Laws (whether or not pertaining to Hazardous Substances), arising out of Airline's operations at the Airport, Airline shall promptly take such action as is reasonably necessary to remedy and cure the violation. Any remediation and cure that Airline conducts pursuant to this Section 23.3 shall be at Airline's sole cost and expense, and to standards required by applicable Environmental Laws and consistent with the use of the property for airport purposes as reasonably determined by the City; provided, however, if a future development project anticipated for the property would result in a change in the standards applicable to the remediation by Airline under this Section 23.3, the City shall notify Airline in writing at the time said future development project is proposed publicly.

23.4 City Remedies. If, during the Term, Airline violates any Environmental Law at, on, or from the Premises or the Airport, and Airline does not act promptly to take such action as is reasonably necessary to remedy and cure the violation, the City has the right, but not the obligation, after providing written notice to Airline as provided herein, to take such action as is reasonably necessary to remedy and cure the violation. If the City has a reasonable belief that Airline's actions or inactions present a threat of violation or a threat of damage to the Premises or the Airport generally, the City has the right, but not the obligation, to take such corrective or mitigating action as the City deems reasonably necessary (and reserves the right to enter the Premises for such purposes). Prior to taking any such actions under this Section 23.4, and provided that the violation, threat of violation, or threat of damage does not require immediate action pursuant to applicable Environmental Laws, or to avoid disruption to Airport operations, the City shall first provide written notice to Airline of such violation or threat, and thirty (30) days within which Airline may demonstrate why no such violation or threat is present, or to timely remedy (or begin to remedy and diligently prosecute to completion, if such remedy reasonably requires more than thirty (30) days to complete) such violation or threat that may be present. If Airline fails to remedy or begin to remedy such violation or threat within such thirty

(30) day period, the City may take such actions as are reasonable and necessary under this Section 23.4. All reasonable costs and expenses incurred by the City arising out of Airline's violation of any Environmental Law, or Airline's actions or inactions described under this Section 23.4, shall become due and payable by Airline thirty (30) days after the City's presentation of an invoice to Airline.

23.5 Access to Premises. Upon the City's forty eight (48) hours' advance request, the Airline shall permit the City access to the Premises to conduct an annual environmental inspection. The City shall conduct the inspection in a manner that does not unduly interfere with Airline's operations. In addition, Airline shall permit the City access to the Premises at any reasonable time upon reasonable notice for the purpose of conducting environmental testing. Prior to conducting environmental testing, the City shall provide written notice to Airline concerning the planned testing procedures and locations. The City shall provide to Airline the results of such testing. In the event of an emergency, Airline shall immediately grant the City access to the Premises for any necessary environmental response activities, including environmental testing needed in response to the emergency. Airline shall have the right to accompany the City on any such inspection or testing conducted by the City under this Section 23.5, and to obtain split samples at no additional cost to the City; provided, however, that Airline agrees to assume all risk of loss, damage and injury to Airline and those accompanying Airline arising out of, or alleged to have arisen out of, any such inspection or testing, and to release and indemnify the City from all such loss, damage and injury.

23.6 Vacating Premises. Prior to vacating the Premises, in addition to all other requirements under this Agreement, Airline shall remove or remediate, in accordance with and to the extent required under applicable Environmental Laws and the clean-up standards described in Section 23.3, Hazardous Substances placed or Released on the Premises by Airline (or its agents or invitees), and shall demonstrate to the City's reasonable satisfaction that such removal or remediation has been completed as required under this Section 23.6. The removal, remediation and demonstration described in this Section 23.6 shall be a condition precedent to the City's return of any portion of the Security Deposit to Airline upon expiration or earlier termination of this Agreement.

23.7 Environmental Indemnity. Except for Excluded Environmental Claims (as hereinafter defined) and claims for other than environmental matters (which are the subject of the indemnification obligation under Section 15.1), Airline agrees to release, defend, indemnify and hold the City, its directors, officers, employees, agents, contractors, consultants, representatives, anyone claiming by or through any of the aforesaid, any other Signatory Airline that accommodates Airline in the manner described in Section 4.11 or Section 5.2, harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation clean-up or other remedial costs (and including actually incurred reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substances on the Premises or at the Airport, or the Release of any Hazardous Substances from the Premises or the Airport to other properties or into the surrounding environment, or from any other violation of Environmental Laws, whether made, commenced or incurred before the Term, or during the Term or any holdover period, or on or after the expiration or earlier termination of this

Agreement, which arise out of Airline's actions at, on, or from the Premises or the Airport before the Term, during the Term or any holdover period, or on or after the expiration or earlier termination of this Agreement. For purposes of this Section 23.7, "Excluded Environmental Claims" shall mean, any claims, causes of action, demands, liabilities, fines, penalties, costs, expenses or any other liabilities, to the extent caused by (A) the migration of Hazardous Substances not first Released during the Term or any holdover period, or on or after the expiration or earlier termination of this Agreement, provided that Airline is not otherwise responsible for such Release at any time; (B) the movement of Hazardous Substances first Released outside the Premises onto or under the Premises due to leaching or the flow of groundwater, provided that Airline is not otherwise responsible for the off-Premises Release that introduced the migrating Hazardous Substances into the environment; (C) the Release or presence of Hazardous Substances upon, about, beneath or affecting all or any portion of the Premises or any off-Premises areas, to the extent Airline can demonstrate that such Release or presence of Hazardous Substances existed as of the Effective Date or was caused by the City or any third party; and (D) the negligent act or omission or willful misconduct of the City.

The indemnification and other obligations under this Section 23.7 shall survive expiration or earlier termination of this Agreement.

Article 24

MISCELLANEOUS PROVISIONS

24.1 No Personal Liability.

No director, officer, agent, employee, or elected official of either party shall be charged personally or contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach of this Agreement, or because of their execution or attempted execution of this Agreement.

24.2 Governing Law.

This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of, the State of North Carolina. Airline and the City expressly agree that, if either party brings suit against the other, venue shall be exclusively vested in the state courts of Mecklenburg County, or if federal jurisdiction is appropriate, exclusively in the United States District Court for the Western District of North Carolina.

24.3 No Waiver.

No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed or operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party.

24.4 **No Exclusive Right or Remedy.**

All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties.

24.5 **Subordination to Sponsor's Assurance Agreement.**

This Agreement shall be subordinate and subject to the terms of any "Sponsor's Grant Assurances" or like agreement that has been or may be furnished by the City to the United States of America, its boards, commissions, or agencies, including without limitation the FAA, or that is required by Applicable Laws, as a condition precedent to receiving Federal financial assistance for development of the Airport and other Airport programs and activities.

24.6 **SEC Rule 15c2-12.**

Airline, upon the City's request, shall provide to the City such information as the City may reasonably request in writing to comply with the City's continuing disclosure requirements under SEC Rule 15c2-12, as it may be amended from time to time, provided, however, that Airline may, in lieu of providing the requested information, direct the City to an Airline or SEC website where the requested information is then currently available.

24.7 **Force Majeure.**

If either party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor disputes (all of which shall be subject to Section 24.22), inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty, or other reason of a similar nature beyond the reasonable control of the party delayed in performing work or doing acts required under this Agreement, performance of such act shall be excused for the period of the actual delay attributable to such causes, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay is herein referred to as an "Unavoidable Delay"). This Section shall not be applicable to Airline's obligations to procure insurance or to pay Airline Fees and Charges, or any other sums, moneys, costs, charges or expenses required to be paid by Airline. If any provision of this Agreement negates or limits the period of any force majeure or Unavoidable Delay extension, such provision shall override this Section 24.7. Airline shall give the City notice of any Unavoidable Delay within a reasonable time (not to exceed one (1) year) following the occurrence of the delaying event.

24.8 **Severability.**

If any covenant, condition, or provision in this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision in this Agreement; provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either the City or Airline in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

24.9 Headings.

The headings of the several sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions, or the interpretation or construction, of this Agreement.

24.10 No Exclusive Rights.

Nothing contained in this Agreement shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) with respect to activity on the Airport, except that, subject to the terms and provisions of this Agreement, Airline shall have the right to exclusive possession of any Exclusive Use Premises made available to Airline under this Agreement.

24.11 Withholding Required Approvals.

Except as specifically provided otherwise in this Agreement, whenever the approval or consent of the City or Airline is required by this Agreement, no such approval or consent shall be unreasonably refused, withheld, or delayed.

24.12 Successors and Assigns.

All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of each party to this Agreement.

24.13 Taxes.

24.13.1 Airline shall be liable for, and shall pay throughout the Term, all taxes payable for, or on account of: (a) the activities conducted by Airline on the Airport; (b) all taxes on the personal property of Airline on or at the Premises; (c) taxes on any property interest in the Premises created by this Agreement; (d) any taxes levied in lieu of a tax on any such property interest; and (e) any sales, use, or other taxes levied on, or measured by, the Airport Fees and Charges and any other fees and charges payable under this Agreement, whether imposed on Airline or on the City.

24.13.2 Airline shall reimburse the City for all such taxes paid or payable by the City. With respect to any such taxes payable by the City that are levied on, or measured by, the Airport Fees and Charges or any other fees or charges payable under this Agreement, Airline shall pay to the City with each payment an amount equal to the tax levied on, or measured by, that particular payment. All other tax amounts for which the City is or will be entitled to reimbursement from Airline shall be payable by Airline to the City at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided that Airline shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by Airline.

24.13.3 Airline may contest, in its own name or the name of the City, the validity or amount of any tax it shall be required to pay to a taxing entity; provided, however, that Airline

shall defend, indemnify and hold the City harmless from all liability and expense arising from such contest, which obligations shall survive expiration or earlier termination of this Agreement and shall provide security satisfactory to the City for its performance of such indemnification obligation. Airline shall not permit a lien or encumbrance to attach to the Premises or the Airport by reason of any failure to pay taxes.

24.14 Exhibits.

All exhibits referred to in this Agreement and which may, from time to time, be referred to in any duly executed amendment to this Agreement are (and with respect to future amendments, shall be) by such reference incorporated into this Agreement and deemed a part of this Agreement as fully as if set forth within it.

24.15 Entire Agreement.

24.15.1 Except as otherwise specifically provided in this Section 24.15, the City and Airline hereby terminate the 1985 Lease in its entirety effective as of 11:59 p.m. on the day before the Effective Date, and hereby agree that this Agreement supersedes the 1985 Lease as of 12:00 a.m. on the Effective Date; provided, however, that any approvals obtained from either party under the provisions of the 1985 Lease and any obligations that the 1985 Lease provides shall survive expiration or earlier termination of the 1985 Lease shall survive its termination under this Section 24.15. The parties intend that this Agreement shall be the final expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever (including prior drafts of the Agreement) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

24.15.2 The termination and cancellation of the 1985 Lease shall in no way alter the validity and binding effect of other agreements executed by and between the City and Airline, nor shall the termination of the 1985 Lease and the release of rights thereunder by the City and Airline be construed as a waiver, relinquishment, or release of any claims, damage, liability, rights of action or causes of action that either the City or Airline may have against the other under the 1985 Lease that accrued prior to the date of such termination, including, without limitation the surviving approvals and rights described in Section 24.15.1.

24.16 Amendments.

Except as specifically provided herein, neither this Agreement, nor any of its terms or provisions, may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought.

24.17 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement other than as specifically provided in Section 4.11, Section 5.2, Section 15.1 and Section 23.7.

24.18 No Joint Venture.

It is expressly agreed that the City and Airline are not, in any way or for any purpose, partners and, therefore, do not assume any responsibilities for one another.

24.19 Attorneys' Fees.

If either party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and if that one party shall substantially prevail in such action, the losing party shall pay all of the prevailing party's reasonable costs and reasonable attorneys' fees as determined by the court. If the City or Airline is represented by in-house attorneys in such action, such attorneys' fees shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Charlotte, North Carolina; provided, however, that Airline shall only be required to pay to the City the difference between the total attorneys' fees owed by Airline and the amount direct billed to the City by its in-house counsel.

24.20 Liens and Encumbrances.

Airline shall keep the Premises free and clear of any liens and encumbrances arising or growing out of Airline's use and occupancy of the Premises or activities at the Airport. Airline agrees to fully indemnify, defend and hold the City harmless in connection with any such liens filed against the Premises. At the City's request, Airline shall provide to the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid. The indemnification and other obligations under this Section 24.20 shall survive expiration or earlier termination of this Agreement.

24.21 Notices.

All notices and payments under this Agreement may be delivered or mailed. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received at the Street Addresses listed in Article 1. If mailed, they shall be sent to the City's Overnight Delivery and Street Address and Airline's Overnight Delivery and Street Address as provided in Article 1, respectively, or to such other respective addresses as either party may from time to time designate to the other party in writing. All notices and payments mailed by regular mail (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

24.22 Labor Disputes.

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

the City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

24.23 Agreement Not to Grant More Favorable Terms.

During the Term, the City agrees not to enter into any lease, contract, or other agreement with any other Air Carrier conducting operations at the Airport that contains fees and charges more favorable to such Air Carrier than the fees and charges payable by Airline under this Agreement, unless the City also makes those more favorable terms available to Airline. The provisions of this Section 24.23 shall in no way limit, impair, or interfere with the City's ability to charge or establish such fees and charges as the City may deem applicable or necessary when entering into any lease, contract, or other agreement with any party that is not an Air Carrier.

24.24 Quiet Enjoyment.

Subject to the terms and conditions of this Agreement, and Airline's payment of the Airport Fees and Charges and performance of the covenants and agreements required under this Agreement, Airline shall peacefully have and enjoy the Premises and the rights and privileges granted by this Agreement. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

24.25 Agreements with the United States.

This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United States, the execution of which is required to enable or permit the transfer of rights or property to the City for airport purposes, or the expenditure of federal grant funds for Airport improvement, maintenance or development. Airline shall reasonably abide by the requirements of agreements entered into between the City and the United States, and shall consent to amendments and modifications of this Agreement if required by such agreements or if required as a condition of the City's entry into such agreements.

24.26 Counterparts.

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original copy of this Agreement and, when taken together, shall be deemed to be one and the same Agreement.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

CITY OF CHARLOTTE

a municipal corporation

By: _____

Name: _____

Title: _____

AIRLINE: <Airline Legal Name>

<Company Type and State>

By: _____

Name: _____

Title: _____