

XXXXXX AIR LINES, INC.

DES MOINES INTERNATIONAL AIRPORT

SCHEDULED AIRLINE OPERATING AGREEMENT

AND TERMINAL LEASE

CITY OF DES MOINES
DEPARTMENT OF AVIATION
DES MOINES INTERNATIONAL AIRPORT
5800 FLEUR DRIVE, ROOM 201
DES MOINES, IOWA 50321-2854

TABLE OF CONTENTS

Article	Description	Page #
1	DEFINITIONS	2
	Section 1.01. Definitions	2
	Section 1.02. Cross-References and Paragraph Headings	10
2	TERM	11
	Section 2.01. Term	11
	Section 2.02. Integration, Pre-Existing Agreements	11
3	RIGHTS AND PRIVILEGES OF AIRLINES	12
	Section 3.01. Use of the Airport	12
	Section 3.02. Specific Rights of Airline at the Airport	12
	Section 3.03. Employee Parking Facilities	13
	Section 3.04. Limitations on Use by Airline	14
	Section 3.05. Airline's Use of Affiliated Airline Companies	15
	Section 3.06. Passenger Lift Device	16
	Section 3.07. City Owned Passenger Loading Bridges	17
4	PREMISES	19
	Section 4.01. Premises in the Terminal Building	19
	Section 4.02. Reassignment of Preferentially Assigned Aircraft Parking Position(s) at Passenger Terminal Apron Area and Loading Bridge(s)	21
	Section 4.03. Reassignment of Exclusive Use Space	23
	Section 4.04. Reassignment of Leased Space during Construction	24
	Section 4.05. Surrender of the Premises	25
	Section 4.06. Holding Over	25
	Section 4.07. Access	25
	Section 4.08. Security Screening Operations	26
5	CAPITAL IMPROVEMENT PROGRAM	27
	Section 5.01. Capital Improvements	27
	Section 5.02. Reviewed Capital Improvements	27
6	RENTALS, CHARGES, AND FEES	28
	Section 6.01. General	28
	Section 6.02. Monthly Activity Reports	28

Article	Description	Page #
	Section 6.03. Terminal Building Space Rentals and Other Charges.....	29
	Section 6.04. Landing Fees.....	29
	Section 6.05. Passenger Terminal Apron Area.....	30
	Section 6.06. Aircraft Parking and Loading Bridge Surcharge.....	30
	Section 6.07. Equipment Parking Areas.....	31
	Section 6.08. Payment Provisions/Interest On Overdue Amounts.....	31
	Section 6.09. Performance Bond.....	31
	Section 6.10. Security Costs.....	32
	Section 6.11. No Other Fees and Charges.....	33
	Section 6.12. Non-Signatory Airline Landing Fees.....	34
	Section 6.13. Passenger Loading Bridge Fees.....	34
7	RECALCULATION OF RENTALS, FEES AND CHARGES.....	35
	Section 7.01. General.....	35
	Section 7.02. Accounting Records.....	35
	Section 7.03. Coordination Procedures -- Budget Review and Calculation of Rentals, Fees, and Charges.....	35
	Section 7.04. Calculation of Basic Terminal Building Area Rental Rate.....	36
	Section 7.05. Minimum Terminal Building Rental Rate.....	38
	Section 7.06. Calculation of Landing Fee Rates.....	38
	Section 7.07. Calculation of Passenger Terminal Apron Area Fees.....	40
	Section 7.08. Calculation of Passenger Loading Bridge Fees.....	42
	Section 7.09. Extraordinary Rate Adjustments of Terminal Building Space Rentals, Landing Fees, Passenger Terminal Apron Area Fees, Passenger Loading Bridge Fees and Equipment Charges.....	43
	Section 7.10. Calculation of Credit of Specified Net Income.....	43
	Section 7.11. Calculation of Airline Contribution to Net Deficit.....	44
	Section 7.12. Calculation of Credit of Prepaid Airline Coverage.....	45
8	RELATIONSHIP OF THIS AGREEMENT TO THE BOND RESOLUTION AND CREATION OF ACCOUNTS.....	46
	Section 8.01. General.....	46
	Section 8.02. Creation and Funding of Prepaid Passenger Airline Coverage Account.....	46
9	MAINTENANCE AND OPERATION OF AIRPORT.....	47
	Section 9.01. General.....	47
	Section 9.02. Terminal Building.....	47
	Section 9.03. City's Right to Inspect and Make Repairs.....	49

Article	Description	Page #
	Section 9.04. Alterations and Improvements.....	49
10	DAMAGE OR DESTRUCTION OF PREMISES.....	51
11	INSURANCE AND INDEMNIFICATION.....	52
	Section 11.01. General.....	52
	Section 11.02. Insurance Requirements.....	52
	Section 11.03. Indemnification (Hold Harmless) Provisions.....	54
	Section 11.04. Non-Liability of City.....	55
	Section 11.05. Waiver of Subrogation Provision.....	55
12	ASSIGNMENT OR SUBLEASE.....	57
	Section 12.01. Assignment and Subletting by Airline.....	57
	Section 12.02. Bankruptcy.....	58
	Section 12.03. Relinquishment of Space.....	58
	Section 12.04. Consent.....	58
	Section 12.05. Merger of Signatory Airlines.....	58
13	DEFAULTS.....	60
14	TERMINATION.....	62
	Section 14.01. Events Permitting Termination by Airline.....	62
	Section 14.02. Events Permitting Termination by City.....	62
	Section 14.03. Termination without Default.....	62
15	FAA PROVISIONS.....	63
	Section 15.01. Non-Discrimination.....	63
	Section 15.02. Civil Rights.....	63
	Section 15.03. Just Services.....	64
	Section 15.04. Exclusive Rights.....	64
	Section 15.05. Subordination to Agreements.....	64
	Section 15.06. Access to Facilities.....	64
16	ENVIRONMENTAL MATTERS.....	65
	Section 16.01. Airline's Representations and Warranties.....	65
	Section 16.02. Allocation of Environmental Responsibility.....	67
	Section 16.03. Indemnity for Environmental Conditions.....	69
	Section 16.04. Survival of Provisions.....	69

Article	Description	Page #
17	GENERAL PROVISIONS	71
	Section 17.01. Rules and Regulations	71
	Section 17.02. Net Agreement	71
	Section 17.03. Compliance with Law	71
	Section 17.04. Reservations of Rights	72
	Section 17.05. Successors and Assigns Bound	72
	Section 17.06. Governing Law	73
	Section 17.07. Quiet Enjoyment	73
	Section 17.08. Non-Liability of Agents and Employees	73
	Section 17.09. Nonwaiver of Rights	73
	Section 17.10. Severability	73
	Section 17.11. Headings	73
	Section 17.12. Force Majeure	73
	Section 17.13. Most Favored Nations	74
	Section 17.14. Entire Agreement	74
	Section 17.15. Co-Partnership Disclaimer	74
	Section 17.16. Agreement Construction	74
	Section 17.17. Attorney's Fees	74
	Section 17.18. License Fees and Taxes	74
	Section 17.19. Compliance with Federal Aviation Regulation (FAR) Part 139 and Transportation Security Regulations (TSR) Parts 1500, 1520, 1540 and 1542	75
	Section 17.20. Notices	75
	Section 17.21. Landlord's Lien	76
	Section 17.22. Consent	76
EXHIBITS	79
Exhibit A	Property Boundary Map	
Exhibit B	Airport Cost Center Plan	
Exhibit C	Leased Premises - Exclusive	
Exhibit D	Aircraft Parking Layout	
Exhibit E	Capital Improvement Program	
Exhibit F	Airport Rates and Charges – FY 2009	
Exhibit G	Net Income (Deficit) Budget – FY 2009	
Exhibit H	Maintenance Responsibilities	
Exhibit I	Equipment Parking Areas	
Exhibit J	Summary of Rentable Terminal Space	
Exhibit K	Apron Area Layout	
Exhibit L	Leased Premises – Common and Joint	
Exhibit M	Insurance Endorsements	
Exhibit N	National Pollutant Discharge Elimination System Certification Statement	
Exhibit O	Statement of Affiliated Relationship	
Exhibit P	Passenger Loading Bridge Fee	

SCHEDULED AIRLINE OPERATING AGREEMENT
AND TERMINAL BUILDING LEASE

DES MOINES INTERNATIONAL AIRPORT

DES MOINES, IOWA

THIS AGREEMENT AND LEASE (hereinafter referred to as the "Agreement"), entered into this ____ day of _____, 2008, by and between the City of Des Moines, Iowa (hereinafter called "City"), a municipal corporation organized and existing under and by virtue of the laws of the State of Iowa, and XXXXXX Air Lines, Inc., a corporation and existing under the laws of the State of _____, (hereinafter referred to as "Airline"), having its principal offices in _____, _____ (city, state);

W I T N E S S E T H:

WHEREAS, City is the owner and operator of Des Moines International Airport (hereinafter called the "Airport" as further defined in Article 1 below) located in Polk County, Iowa; and

WHEREAS, on September 20, 1993, by Roll Call 93-3490, the Des Moines' City Council approved Ordinance 12,040 assigning certain rights and responsibilities pertaining to the Airport to the Des Moines International Airport Board (hereinafter called the "Airport Board"), including the right to enter into leases up to three (3) years in duration and other certain agreements; and

WHEREAS, this Agreement, being for a duration of greater than 3 years, requires Des Moines City Council approval; and

WHEREAS, Airline is engaged in the business of transportation of persons, property, and mail by air and desires to lease from City certain premises and facilities and acquire from City certain rights and privileges in connection with its use of the Airport; and

WHEREAS, City has the right to lease property and permit certain operations at the Airport upon the terms and conditions hereinafter set forth and has full power and authority to enter into this Agreement in respect thereof;

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. Definitions

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

"Aeronautical Services" means any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. The following activities commonly conducted on airports are aeronautical services within this definition: charter operations, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other included activities, repair and maintenance of aircraft parts, and any other activities which because of their direct relationship of the operation of aircraft can appropriately be regarded as an "aeronautical activity".

"Affiliated Airline Company" means any domestic Air Transportation Company, that is (a) a parent or subsidiary of Airline, or an airline under common control; or (b) shares an International Air Transport Association (IATA) flight designator code with Airline at the Airport (Code-Sharing Partner); or (c) otherwise operates under essentially the same trade name as Airline at the Airport and uses essentially the same livery as Airline. No major airline, as such term is defined by the FAA, shall be classified as an Affiliated Airline Company of another major airline, unless either clause (a) or (c) above defines the relationship between such airlines at the Airport.

"Aircraft Landing" means any aircraft landing at the Airport except for any Emergency Landing or reasonable touch-and-go operations for aircraft reasonably expected to be used for air transportation at the Airport as approved by Aviation Director.

"Airport" means Des Moines International Airport, as shown in Exhibit A, Property Boundary Map, as it now exists or as it may change from time to time.

"Airport Cost Centers" means cost areas to be used for purposes of accounting for Airport Operating Revenues, Operating Expenses, and other costs (as allowed for under Article 7 contained herein) and for calculating and adjusting certain rates, fees, and charges described herein, as shown in Exhibit B, Airport Cost Center Plan, as more particularly described below:

A. "Airfield Area" means the airfield and related support facilities at the Airport including runways, taxiways, approaches, clear zones, safety areas, perimeter fence and gates, service roads, field maintenance facility, ARFF facility, airfield drainage system, and infield areas, together with all associated landing and navigational aids.

B. "Buildings and Ground Area" means the building or buildings used for air cargo purposes and those portions of the Airport not included in the other five cost centers.

C. "Parking and Roadways Area" means the public and employee parking areas, access and terminal circulation roads and rights-of-way, and landscaped areas.

D. "Terminal Building Area" means the passenger terminal building and associated support facilities.

E. "Apron Area" means the area of the Airport, as depicted in Exhibit B, that provides for the parking, loading, unloading, and servicing of aircraft and consists of the Passenger Terminal Apron Area and Cargo Apron Area.

F. "Passenger Loading Bridge" means all City-owned passenger loading bridges in the Terminal Building Area.

"Airport Master Plan" means the master plan of the Airport, dated March 1995, and approved by the Airport Board on March 7, 1995, by Board Resolution A95-51, together with an update approved April 3, 2007, by Board Resolution A07-68 and any future amendments made from time to time, which reflects proposed development, redevelopment, expansion and usage of Airport property.

"Airport Operating Revenues" means all income and receipts derived by City from the operation of the Airport but excluding:

A. Any money received by or for City from the levy or collection of taxes which are not considered revenues under the Airport and Airways Improvement Act;

B. Grants and other money received from the State of Iowa and the United States of America and required to be deposited in restricted funds, except aviation fuel taxes which Airport receives and uses to fund operations. Such taxes shall be credited to the most appropriate cost center as determined by Aviation Director;

C. Lease, security, and other deposits until forfeited;

D. Performance bonds prior to tenant default;

E. Money required to be paid to the State of Iowa and the United States of America pursuant to agreements with City;

F. Proceeds received from insurance (except as herein provided), or from the sale of or upon the taking by eminent domain of all or any part of the Airport;

G. Proceeds from Airport Revenue Bonds, Special Purpose Facility Bonds and General Obligation Bonds issued by City or proceeds from loans obtained by City;

H. Proceeds from any special facility constructed under the provisions of Special Purpose Facility Bonds, and which are restricted as to use by such provisions;

I. Gifts or grants received by City, the use of which is restricted by the donor or grantor;

J. Proceeds of any Passenger Facility Charge, Customer Facility Charge, or similar charge levied by or on behalf of City;

K. All income, interest, or revenues resulting from investment of any funds from accounts in the Airport Enterprise Fund Surplus Subaccount(s) which were accumulated in said fund as surplus revenues after prior Fiscal Year's payment of Net Income to Signatory Passenger Airlines as provided for in Section 7.12.;

L. Revenues accruing from projects outside the Airfield Area and Terminal Building Area Airport Cost Centers which were financed entirely from City's surplus revenues accumulated in Airport Enterprise Fund after prior Fiscal Year's payment of Net Income to Signatory Passenger Airlines as provided for in Section 7.12, including but not limited to cargo, fuel, and hangar facilities, with no operating and maintenance costs attributable to projects financed with said revenues to be included in Airline rates;

M. Amounts representing Prepaid Passenger Airline Coverage.

"Airport Revenue Bonds" means any bonds (and related financing instruments), both serial and term, heretofore and hereinafter issued by City, or any other similar or substitute financing instrument issued for Airport purposes (including but not limited to notes, certificates, commercial paper, and related financing instruments), secured by a pledge of the revenues of the Airport, but shall not include any Special Purpose Facility Bonds.

"Air Transportation Company" means a company certificated by the FAA to engage for hire in the transportation of persons, property, or mail by air.

"Annual General Obligation Bond Debt Service" means the total annual amount of principal and interest payments required to be made in a given Fiscal Year on the General Obligation Bonds issued by City of Des Moines for Airport purposes.

"Annual Operating Budget" means the Airport's operating budget prepared by the Aviation Director and approved by City.

"Annual Airport Revenue Bond Debt Service" means the total amount required to be deposited in any Fiscal Year to any interest, principal, and sinking fund for any revenue bonds issued by City for Airport purposes.

"Aviation Director" means the director of the Airport or his or her duly authorized representative who is designated by City to exercise functions with respect to the rights and obligations of City under this Agreement.

"Bond Resolution" means any Master Bond Resolution and Series Bond Resolution authorizing bonds of City for Airport purposes, other than Special Purpose Facility Bonds, payable from Airport Revenues, as the same may from time to time be adopted, amended, or supplemented by a supplemental resolution in accordance with the terms thereof.

"Capital Improvement" means (a) the acquisition of land or easements any single item of which has a cost (net of grants-in-aid) of \$100,000 or more; (b) the purchase of vehicles, machinery, equipment, or rolling stock, any single item of which has a cost (net of grants-in-aid) of \$50,000 or more; provided, however, City agrees to use its best efforts to avoid a sudden annual increase in charges to the Air Transportation Companies caused by expensing such equipment purchases, and to use, whenever feasible, a scheduled fleet management-purchase program, amortization of more vehicles and equipment, and other cost-effective methods all at City's discretion; (c) the planning, engineering, design, and construction of new facilities any single item of which has a cost (net of grants-in-aid) of \$75,000 or more; (d) the performance of any extraordinary, nonrecurring major maintenance of facilities that may be acquired, purchased, or constructed by City to improve, maintain, or develop the Airport, of which any single item of improvement has a cost (net of grants-in-aid) of \$75,000 or more; (e) the costs of contracted Miscellaneous Pavement Maintenance Projects that exceed \$250,000 per year.

"Capital Improvement Program" means the Airport's capital improvement plan and budget prepared by the Aviation Director, reviewed by Signatory Passenger Airlines in accordance with Article 5, and approved annually by City.

"Cargo Apron Area" of the Apron Area is the area of the Airport designated for the parking and servicing of aircraft associated primarily with the loading and unloading of property and mail.

"Common Use Formula" means a formula that prorates 10% of the cost of a service or space equally among Air Transportation Companies who provide Scheduled Service and use the service or space and prorates 90% of the cost of a service or space among Air Transportation Companies who provide Scheduled Service or non-scheduled service and use the service or space on the basis of that proportion which the number of each Air Transportation Company's Enplaning Passengers bears to the total number of Enplaning Passengers of all such Air Transportation Companies using the service or space. For non-scheduled service, Enplaning Passengers shall be added to the handling Scheduled Service operator's totals, if applicable, or if not handled by a Scheduled Service provider, then billed directly by the Airport. Such formula shall be calculated each month using passenger enplanement statistics for the month prior to the immediately preceding month (e.g., for the month of September, the enplaning figures from the month of July will be used). However, if an Air Transportation Company that was not previously providing Scheduled Service to the Airport begins Scheduled Service to the Airport and uses the service or space, or if an Air Transportation Company ceases Scheduled Service to the Airport and ceases using the service or space, the formula will be re-determined by City in

consultation with the Signatory Airlines to take into account the cessation or commencement of service.

"Coverage" for any series of Airport Revenue Bonds shall mean the percentage of the Annual Airport Revenue Bond Debt Service which City covenants to generate in net revenues under the Bond Resolution and shall also mean the dollar amount computed by multiplying said percentage times Annual Airport Revenue Bond Debt Service for a Fiscal Year.

"Deplaning Passengers" means all terminating passengers and all incoming on-line or off-line transfer passengers arriving at the Airport.

"Emergency Landing" shall mean any landing of an aircraft which after having taken off from the Airport, and without landing at any other Airport, returns to and lands at the Airport because of weather conditions, mechanical or operating failure, or any other reason of emergency.

"Enplaning Passengers" means all originating passengers and all outgoing on-line or off-line transfer passengers boarded at the Airport.

"Equipment and Capital Outlays" means the purchase of vehicles, machinery, equipment or rolling stock, any single item of which has a cost (net of grants-in-aid) of less than \$50,000 or any other single item costing less than \$75,000 (net of grants-in-aid) acquired, purchased, or constructed to improve, maintain, or develop the Airport, and contracted Miscellaneous Pavement Maintenance Projects totaling \$250,000 or less per year.

"FAA" means the Federal Aviation Administration of the United States Government or any federal agencies succeeding its jurisdiction.

"FAR" means Federal Aviation Regulations adopted by the Federal Aviation Administration of the U.S. Government or federal agencies succeeding to its jurisdiction.

"Fiscal Year" refers to City's fiscal year and means the twelve-month period commencing July 1 and extending through June 30 of the following year.

"General Obligation Bonds" means the general obligation bonds issued by City of Des Moines for Airport improvement purposes.

"Ground Support Services" means Aeronautical Services, exclusive of the TSA conducted passenger screening operation, performed for airlines serving air cargo or passengers, including but not limited to the following:

- A. Loading and unloading of air cargo;
- B. Loading and unloading of passengers and baggage;
- C. Loading and unloading of U. S. Mail;
- D. Aircraft deicing or washing;

- E. Aircraft parking and towing;
- F. Aircraft lavatory and potable water servicing;
- G. Airline ticketing counter operations;
- H. Airline catering, vending, cleaning or other support services;
- I. Maintenance or other mechanical work on any equipment located on Airport;
- J. Passenger screening and skycap services;
- K. General or specific operations management;
- L. Other aeronautical services approved by the Aviation Director.

"Ground Support Services Operator" means any person or entity engaged in Ground Support Services for any other tenant of the Airport.

"Joint Use Formula" means a formula that prorates 90% of the cost of a service or space among the Air Transportation Companies who provide Scheduled Service and have the service or space available for use on the basis of that proportionate amount that said Air Transportation Company's Enplaning Passengers bears to the total number of Enplaning Passengers of all such Air Transportation Companies having available for use the service or space, and 10% of the cost based on that proportion which an Air Transportation Company's number of assigned gate holdroom(s) bears to the total number of assigned gate holdrooms of all Air Transportation Companies who provide Scheduled Service. For purposes of this 10% calculation, an Affiliated Airline Company is considered a part of the Signatory Passenger Airline. Each Air Transportation Company shall be counted as having at least one (1) gate holdroom regardless of actual use of such holdroom. Such formula shall be calculated using monthly passenger enplanement statistics for the month prior to the immediately preceding month (e.g., for the month of September, the enplaning figures from the month of July will be used) and shall include passengers of all flight operations of Air Transportation Companies not providing Scheduled Service being handled by Airline. However, if a Air Transportation Company that was not previously providing Scheduled Service to the Airport begins Scheduled Service to the Airport and uses the service or space or if an Air Transportation Company ceases serving the Airport and ceases using the service or space the formula will be determined by City in consultation with the Signatory Airlines to take into account the cessation or commencement of service.

"Leased Premises" means the space in the Terminal Building leased to Airline under this Agreement, comprising three categories of space as defined below and depicted on Exhibits C and L.

- A. "Common Use Space" means the space leased to Airline in common with other Air Transportation Companies for which City assesses rental charges based on the Common Use Formula.
- B. "Exclusive Use Space" means the space exclusively leased to an Airline.
- C. "Joint Use Space" means the space leased to Airline jointly with one or more other Air Transportation Companies for which City assesses rental charges based on the Joint Use Formula.

"Maximum Certificated Gross Landing Weight" means, for any aircraft operated by an Air Transportation Company at the Airport, the maximum landing weight in 1,000-pound units of each such aircraft, as set forth in the Air Transportation Company's FAA approved operating manual governing that aircraft.

"Miscellaneous Pavement Maintenance Project" is the repair of hard surfaced areas with surface maintenance procedures, crack sealing, partial depth repair, or full depth repair as contained within Equipment and Capital Outlays in accordance with Article 7 and presented and reviewed in accordance with Section 7.03 as contained herein.

"Net Income" or "Net Deficit" means all of the Airport Operating Revenues less all Operating Expenses, Equipment and Capital Outlays, Annual General Obligation Bond Debt Service, Annual Airport Revenue Bond Debt Service, required deposits to reserve accounts established pursuant to the Bond Resolution(s), and annual amortization of the cost of all City funded Capital Improvements.

"Non-Signatory Passenger Airline" means an Air Transportation Company providing scheduled or non-scheduled transportation of passengers or property to and from the Airport that has not executed agreements with City substantially similar to this Agreement covering the use and occupancy of facilities at the Airport.

"Operating Expenses" means, for any Fiscal Year, City's current annual expenses of maintaining, repairing, operating, and administering (including but not limited to City charges in accordance with federal law) the Airport, including the cost of defending, settling, or satisfying any litigation that relates to the Airport, net of insurance or other related proceeds.

"Passenger Terminal Apron Area" of the Apron Area is the area of the Airport adjacent to the Terminal Building designated for the parking and servicing of aircraft associated primarily with the loading and unloading of passengers.

"Preferentially Assigned Aircraft Parking Position" means any aircraft parking position in and adjacent to the terminal building that is assigned on a preferential use basis. Airline shall have priority in using any such positions assigned to it on a preferential use basis to accommodate its scheduled, delayed scheduled, charter, or extra section flights. Said priority shall begin ½ hour before scheduled arrival time and extend ½ hour after scheduled departure time. Said charter or extra section flights must be coordinated in writing with Aviation Director, at least 24 hours in advance of the flight's arrival or departure. To be considered a delayed scheduled flight, said flight must have originally been a scheduled, charter or extra section flight to or from the Airport and must have a set arrival or departure time approved, if applicable, by the FAA Air Traffic Control. Aviation Director may, however, assign any such position for use by others pursuant to the provision of Section 4.02 herein. Each Aircraft parking position to be preferentially assigned initially to Airline is designated in Exhibit D attached hereto.

"Prepaid Passenger Airline Coverage" means the amount of Coverage paid through rentals, fees, and charges by the Signatory Passenger Airlines during a Fiscal Year.

"Public Areas" shall mean those Terminal Building areas not leased to any person, company, or corporation that are open for use by the general public.

"Rentable Space" means the space in the Terminal Building available for lease to any Air Transportation Company, concessionaire, or other rent-paying tenant.

"Required Security Personnel" means certified law enforcement or other security personnel required to meet Transportation Security Regulations or other security measures required by the Airport security program.

"Rules and Regulations" means those rules, regulations and ordinances promulgated by City, the Airport Board, or the Aviation Director for the orderly use of the Airport by Air Transportation Companies and other tenants and users of the Airport, as the same may be amended, modified, or supplemented from time to time, the mandates of the FAA, or the rules or regulations of any other federal or state agency which are binding on Airline.

"Scheduled Airline Operating Agreement and Terminal Lease" means any agreement between City and an Air Transportation Company substantially in the form of this Agreement.

"Scheduled Cargo Airline Operating Agreement" means any agreement between City and a Signatory Cargo Airline for the use of the Airport.

"Scheduled Service" means a minimum of five (5) regularly-scheduled aircraft flights per week providing air transportation for hire of passengers, property, or mail between the Airport and one or more other designated airports.

"Signatory Cargo Airline" means an Air Transportation Company providing Scheduled Service transporting property or mail to and from the Airport, which has executed a Scheduled Cargo Airline Operating Agreement.

"Signatory Passenger Airline" means an Air Transportation Company providing Scheduled Service of air transportation of passengers to and from the Airport that has executed a Scheduled Airline Operating Agreement and Terminal Lease.

"Special Purpose Facility" means any specific improvement undertaken by City for the benefit of one or more airlines or other Airport tenant under the terms of a separate agreement that provides for, among other things: (a) a term equal to or greater than the amortization period or term of any debt financing; (b) the payment of rentals or fees for the use or occupancy thereof in sufficient amounts to permit the financing of such improvement and payment of all costs thereof solely from such rentals or fees; and (c) the payment of maintenance and operating cost of such improvement by the tenant or tenants thereof.

"Special Purpose Facility Bonds" means any debt of City which is permitted by, but not issued pursuant to, the terms of the Bond Resolution and which is secured by and payable solely from rentals or other charges derived by City under a lease, sale, or other agreement between City and the person, firm, or corporation utilizing the special facilities financed thereby.

"Storm Water Pollution Prevention Plan (SWPPP)" means a document prepared in accordance with the Airport's National Pollutant Discharge Elimination System permit. The SWPPP identifies potential pollutants and establishes procedures to minimize potential pollutants in storm water runoff from industrial activities. A co-permittee to the permit can utilize the Airport's general SWPPP if they submit co-permittee specific best management practices to the Airport, or a co-permittee can prepare their own SWPPP and submit it to the Airport for review and inclusion with the Airport's SWPPP.

"Subcontractor" means any individual or entity with which Airline has a contract, subcontract, sublease or operations-support or related agreement, including but not limited to Ground Support Service Operators, ground equipment maintenance operators and Affiliated Airline Companies.

"Total Landed Weight" means the sum of the Maximum Certificated Gross Landing Weight for the described Aircraft Landings during the stated period of time.

"Terminal Building" means the building commonly referred to as the passenger terminal building contained within the Terminal Building Area cost center, as shown in Exhibit B.

"Transportation Security Administration (TSA)" means the Transportation Security Administration of the U.S. Government or any federal agencies succeeding to its jurisdiction.

"Transportation Security Regulations (TSR)" means the regulations adopted by the Transportation Security Administration of the U.S. Government or federal agencies succeeding to its jurisdiction.

Section 1.02. Cross-References and Paragraph Headings

References in the text of this Agreement to articles, sections, paragraphs or exhibits are to the referenced provisions contained in this Agreement, unless otherwise specified. Headings and titles of articles, sections, paragraphs of this Agreement or any of its exhibits are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement or any exhibit.

ARTICLE 2 TERM

Section 2.01. Term

The Term of this Agreement shall be from July 1, 2008, through June 30, 2013, subject to prior termination as provided in Article 14 herein.

Section 2.02. Integration, Pre-Existing Agreements

This Agreement constitutes the entire agreement of the parties with respect to the matters covered herein. Coincident with the effective date of this Agreement all other terminal building leases and airfield use agreements between Airline and City shall be terminated except for those obligations which by their nature survive termination. This Agreement includes the following Exhibits, which are incorporated by this reference:

Exhibit A	Property Boundary Map
Exhibit B	Airport Cost Center Plan
Exhibit C	Leased Premises - Exclusive
Exhibit D	Aircraft Parking Layout
Exhibit E	Capital Improvement Program
Exhibit F	Airport Rates and Charges – FY 2009
Exhibit G	Net Income (Deficit) Budget – FY 2009
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Exhibit I	Equipment Parking Areas
Exhibit J	Summary of Rentable Terminal Space
Exhibit K	Apron Area Layout
Exhibit L	Leased Premises – Common and Joint
Exhibit M	Insurance Endorsements
Exhibit N	National Pollutant Discharge Elimination System Certification Statement
Exhibit O	Expense Allocations to Cost Centers
Exhibit P	Passenger Loading Bridge Fee

ARTICLE 3 RIGHTS AND PRIVILEGES OF AIRLINES

Section 3.01. Use of the Airport

Airline, its employees, passengers, guests, patrons, and invitees shall have the right, subject to the Rules and Regulations, to use in common with other duly authorized users the Airport and its appurtenances, facilities, improvements, equipment, and services that have been or may hereafter be provided for common use at or in connection with the Airport.

Section 3.02. Specific Rights of Airline at the Airport

In addition to all rights elsewhere granted to Airline in this Agreement, Airline shall have the right, subject to the Rules and Regulations, to use the Airport for the following purposes only:

- A. The operation of aircraft for the carriage of persons, property, or mail, principally in common carriage, including all activities reasonably related to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, and testing of aircraft or other equipment of or operated by Airline or operated in connection with activities described in the previous paragraph.
- C. The loading and unloading of persons, property, or mail at the Airport, by such motor vehicles or other means of conveyance as Airline may desire to use, in the operation of its air transportation business; provided that any ground transportation commercial carrier, including that of Airline, transporting persons or their baggage to or from Airport for hire shall first secure and thereafter hold a valid lease, license, or other agreement with City for the right to carry persons or their baggage to or from the Airport and shall pay City such rentals, fees, or percentages of the revenues received by such ground transportation commercial carrier for such right as City may set. Any ground transportation provided by Airline for the benefit of its employees and passengers, without any charge therefore, shall be excluded from the licensing provisions of this subsection.
- D. The training at the Airport of persons and testing of aircraft and other equipment, such training and testing to be limited to that related to Airline's air transportation business.
- E. Subject to Sections 3.02(J), 3.02(K), and 3.04(H) herein, the purchase of personal property or services, including without limitation fuel, lubricants, food, beverage and any other materials and supplies related to Airline's air transportation business, and the making of agreements for services related to Airline's air transportation business.
- F. The sale, disposition, transfer and exchange of Airline's aircraft, engines, accessories, other equipment, and materials or supplies related to Airline's air transportation business. Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform such functions to the extent they are ancillary to its air

transportation business. Airline shall not sell fuel, oil, or lubricants except to an Affiliated Airline Company, except when the same are of a particular grade or quality not otherwise available at the Airport or where such sales are related to services otherwise permitted under this Agreement. Grade or quality shall not be construed to mean commercial brand name.

G. Subject to Sections 3.02 (J) and 3.02 (K), the performance by or on behalf of Airline, of maintenance and support services (including without limitation providing line maintenance and related materials and supplies) with respect to aircraft and other equipment operated by Airline or by other Air Transportation Companies with which Airline has an applicable agreement approved by the City. City reserves the right to designate locations reasonably accessible from the Terminal Building for performance of aircraft maintenance and service activities.

H. The installation, maintenance and operation of identifying signs on Airline's Exclusive Use Space and preferentially-assigned holdrooms, as depicted in Exhibits C and D, subject to the prior written approval of the Aviation Director; provided that such signs shall be: (i) substantially uniform in size, type, and location with those of other airlines; (ii) consistent with Airport's graphics standards; and (iii) in compliance with the applicable Rules and Regulations.

I. The installation, maintenance and operation at suitable Leased Premises locations at the Airport, including in the terminal building, of computer, communication, meteorological, and aerial navigation equipment and facilities such as self service ticketing or other similar equipment, as may be necessary or desirable for Airline's operations; provided that, such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation, and type of equipment shall be subject to the prior written approval of Aviation Director, which approval shall not be unreasonably withheld, and shall conform to all applicable federal, state and local requirements. Airline may assess and collect reasonable charges from others for the use of any systems, furnishings, or equipment furnished by Airline. Such charges shall be reasonable and based on Airline's cost of providing the systems, furnishings, or equipment plus a reasonable administrative fee not to exceed 15%.

J. Airline may provide or receive Ground Support Services to or from other Air Transportation Companies. Airline may receive Ground Support Services from any third party that has been issued a permit to perform business at the Airport. City reserves the right to charge such third parties a fixed permit fee.

Section 3.03. Employee Parking Facilities

Airline employees working at the Terminal Building shall have the right to the use of reasonably adequate vehicular parking facilities in common with other tenant employees working in the Terminal Building. Such facilities shall be located in an area designated by Aviation Director. City reserves the right to assess a reasonable charge to airline employees for employee parking facilities at a rate not more than that being charged other tenant employees for use of the same facilities.

Section 3.04. Limitations on Use by Airline

In connection with the exercise of its rights under this Agreement, Airline:

A. Shall not do or permit to be done by its employees, agents, contractors, or others under Airline's reasonable control, anything at or about the Airport that may interfere with the effectiveness or accessibility of the drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilating, and air conditioning systems or other Airport systems installed or located on or within the Leased Premises of the Airport.

B. Shall not do or permit to be done by its employees, agents, contractors, or others under Airline's reasonable control, any act or thing upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

C. Shall not dispose of or permit any of its employees, agents, contractors, or others under Airline's reasonable control, to dispose of any liquid or solid waste material taken from or products used with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated by equipment installed by City and with the approval of City for that purpose or such disposal meets all applicable laws, including the requirements of the Airports National Pollutant Discharge Elimination System permit and a related SWPPP.

D. Shall not keep or store flammable liquids within the enclosed portion of the Leased Premises in excess of Airline's working requirements during any 24-hour period, except in rooms or underground tanks especially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters and pre-approved by City from the standpoint of safety. Any such liquids having a flash point of less than 100 degrees Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

E. Shall meet National Fire Protection Association or other applicable federal, state or local fire, safety, and health regulations for the movement, handling and storage of hazardous materials whether explosive, biological, radioactive, or other.

F. Shall, upon notification by the Aviation Director and as soon as it may lawfully do so, promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, the runways, taxiways, aprons, and terminal area aircraft parking positions) and place any such disabled aircraft in such parking areas as may be designated by the Aviation Director. Airline may store such disabled aircraft only for such length of time and upon such terms and conditions as may be established by the Aviation Director. Should Airline fail to remove any of its disabled aircraft in a reasonable and timely manner in accordance with this paragraph, City may, but shall not be obligated to cause the removal of such disabled aircraft, and Airline agrees to reimburse City for all actual costs of such removal. Airline hereby releases City from any and all claims for damages to the disabled aircraft arising from or in any way connected with such removal by City, except to the extent caused by the willful misconduct or negligence of City, its agents or its employees.

G. Except as may subsequently be provided in a separate agreement, Airline shall not maintain or operate in the Terminal Building or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public or to its employees or passengers nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport; except for dispensing to passengers during periods of irregular operations and except that Airline may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Airline employees in areas not accessible to the general public. Airline may, by separate agreement only, engage in the sale of food or beverages at a "V.I.P. Room" or similar private club at the Airport.

H. Except for TSA required passenger screening operations, Airline shall not purchase Aeronautical Services on the Airport from any person or entity unless that vendor is appropriately licensed by City or has appropriate concession or other agreements with City.

I. Shall not do or permit to be done by its employees, agents, contractors, or others under Airline's reasonable control, any act or thing upon the Airport that is not covered by the insurance provided under Section 11.02.

Section 3.05. Airline's Use of Affiliated Airline Companies

A. Airline shall acknowledge all qualifying relationships with its Affiliate Airline Companies to be operating at Airport on behalf of Airline by notification in writing to the Airport, delivered no later than 10 days prior to the start of such service. Notification to the Airport shall include an adequate description of such Affiliated Airline Company, not limited to the complete legal name of the Affiliated Airline a corporate telephone number and address, and an appropriate point of contact.

B. Affiliated Airline Company shall be required to execute an Affiliated Airline Airfield Use Agreement with City. Execution of the Affiliated Airline Airfield Use Agreement and approval by City shall be required before the Affiliated Airline Company is granted affiliated status.

C. Upon execution and approval of the Affiliated Airline Airfield Use Agreement the Affiliated Airline Company shall be treated as an Affiliated Airline Company of Airline and shall be charged fees at the same rate as Airline hereunder and have the same rights as Airline, provided Airline remains signatory to this Agreement. All airlines wishing to operate as an Affiliated Airline Company will be treated as non-signatory until all requirements are met.

D. Airline shall be responsible to report monthly activity for each Affiliated Airline Company as set forth in Section 6.02, Reports, and shall be responsible for payment of all landing fees of each Affiliated Airline Company for activity related to Airline.

E. Airline and its Affiliated Airline Companies shall be counted as one airline for the purposes of calculating payments received and for computing all rentals, charges, and fees, including, but not limited to, any common use, or joint use charges.

F. Airline and its Affiliated Airline Companies shall be counted as one airline for the purposes of calculating the Net Income credit/deficit as established by this Agreement. Affiliated Airline Companies shall not be eligible to receive credit or to be charged for any deficit in the Net Income credit/deficit calculation.

G. Airline shall ultimately be responsible for all rentals, charges, and fees incurred by each Affiliated Airline Company, unless Affiliated Airline Company is acting of its own accord such as conducting passenger charter activity outside of the normal operating schedule or providing services to a carrier other than Airline. When acting of its own accord, the Affiliated Airline Company will be billed directly by City.

H. Notwithstanding anything contained herein to the contrary, the Airline may at any time give the City ninety (90) days prior written notice that an Air Transportation Company shall no longer be considered, or that an Air Transportation Company shall be added, as an Affiliate of Airline for purposes of this Agreement.

Section 3.06. Passenger Lift Device

A. Cost of Passenger Lift Device. City has acquired passenger access lift equipment (a "Passenger Lift Device") for use by Airlines operating at the Airport. The Airport will charge for the usage of the Passenger Lift Device in accordance with the Rules and Regulations. Cost associated with the purchase, operation, and maintenance of the passenger lift device shall be funded from non airline rate base sources. Revenues collected for said usage shall not be considered Airport revenues subject to Section 7.10, Calculation of Credit of Specified Net Income.

B. Grant of Use to Airline. Airline and its Aeronautical Services providers may use the Passenger Lift Device for loading and unloading passengers from aircraft at the Airport subject to the terms and conditions set forth in Section 15.06 of this Agreement and subject to such additional reasonable terms and conditions as City may, from time to time in its sole discretion, impose. It is Airline's sole responsibility to board Airline's passengers using the Passenger Lift Device.

C. Incompatible Aircraft. If Airline elects to utilize aircraft incompatible with the Passenger Lift Device, Airline shall be responsible at its expense for providing any required passenger access lift, ramp or other device compatible with its aircraft. Airline shall bear all liability for its failure to provide suitable passenger access lift, ramp or devices for its operations at the Airport.

D. Personnel Training. Airline will cause all of its and its Aeronautical Services providers' personnel who are involved in providing boarding assistance through the use of the Passenger Lift Device to be properly trained as specified by its manufacturer in its use and operation and in appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

E. Assumption of Liability and Indemnity. For any periods during which Airline has possession of or control over the Passenger Lift Device, Airline assumes all risks of liability of any kind arising from or pertaining to the delivery, possession, operation, use, condition,

transportation or disposition of the Passenger Lift Device or the return of the Passenger Lift Device to City. Airline shall indemnify and hold harmless the City, its elected and appointed officials, its agents, employees, volunteers and others working on behalf of City (each a "City Indemnitee") from and against any and all claims, costs, expenses, fines, damages and liabilities ("Claims"), arising from or pertaining to Airline's and its Aeronautical Services providers' delivery, possession, operation, use, maintenance, transportation or disposition of the Passenger Lift Device or the return of the Passenger Lift Device to City, including without limitation any Claims for bodily injury, death, property damage and attorney's fee; except to the extent Claims are caused by the negligence or willful misconduct of any City Indemnitee.

F. Risk of Loss. For any periods during which Airline has possession of or control over the Passenger Lift Device, until it is returned to City, Airline shall have the sole risk for injury, damage to or destruction of the Passenger Lift Device, and for its loss or theft if Airline failed to take reasonable steps to safeguard it. If, while Airline has possession of or control over the Passenger Lift Device, there is repairable damage caused to the Passenger Lift Device, that Airline shall be responsible for the repairs. If, while Airline has possession of or control over the Passenger Lift Device, the Passenger Lift Device or any part of it is destroyed, damaged beyond repair, or permanently rendered unfit for normal use for any reason whatsoever, or if the Passenger Lift Device is lost or stolen and Airline fails to return it or to take reasonable steps to safeguard it, then Airline shall promptly notify City and pay City on demand, in complete satisfaction and discharge of Airline's liability for such occurrence, the fair market value of the Passenger Lift Device, as reasonably determined by a third party appraiser chosen by City and paid for by Airline, effective as of the time immediately prior to the occurrence.

G. Maintenance. City shall maintain the Passenger Lift Device in proper working condition. If at any time Airline becomes aware of the need for maintenance or repairs to the Passenger Lift Device, Airline shall:

1. Promptly notify City in writing of the nature of the maintenance or repairs needed; and
2. Refrain from using the Passenger Lift Device until such time as City has performed such repairs or maintenance as it deems necessary and granted its written consent to the continued use of the Passenger Lift Device.

H. Alterations of Passenger Lift Device. Airline shall make no repairs, maintenance or alterations of the Passenger Lift Device without the prior written consent of City.

I. Compliance with Requirements of Passenger Lift Device. Airline shall comply with all laws, regulations and ordinances, and all applicable requirements of the manufacturer of the Passenger Lift Device, applicable to the physical possession, operation and use of the Passenger Lift Device.

Section 3.07. City Owned Passenger Loading Bridges

Airline shall have the right to use on a preferential basis with other airlines providing passenger service at Airport the Passenger Loading Bridges, provided that, Airline shall first provide

Airport-approved training to its employees who will operate the Passenger Loading Bridges and provide Airport a list of trained employees which shall be signed by the local manager. Airline shall not permit any employee who has not received the training to operate any Passenger Loading Bridge. Damage caused during the operation of a passenger loading bridge by an employee that has not received the proper training may subject Airline to a fine not to exceed \$500 in addition to reimbursing Airport for the repairs to the Passenger Loading Bridge and associated administrative costs. All problems with Passenger Loading Bridges should be reported to Airport Operations promptly.

ARTICLE 4 PREMISES

Section 4.01. Premises in the Terminal Building

A. Space in the Terminal Building. Airline shall lease, subject to the provisions of Section 4.03, areas in the Terminal Building as more particularly delineated in Exhibits C, D, and L.

B. Airline shall lease space in the Terminal Building on an exclusive, joint, or common use basis as follows:

1. Exclusive Use Space

- a. Ticket counter
- b. Office
- c. Concourse garage
- d. Equipment parking (exterior space as shown in Exhibit I)
- e. Bag storage
- f. Basement storage
- g. Terminal counter space
- h. Second floor office space

2. Joint Use Space

- a. Concourse departure areas
- b. Concourse transitional area
- c. Security screening area
- d. Regional carrier holdroom and ramp access

3. Common Use Space

- a. Inbound baggage
- b. Baggage claim area
- c. Triturator room
- d. Curbside bag check-in enclosure
- e. Outbound baggage areas
- f. Operations hallways

C. The square-foot dimensions set forth in Exhibits C and L, as amended by written agreement of the parties from time to time, shall be the basis for determining the amount of the rentals payable in the ensuing Fiscal Years pursuant to Articles 6 and 7.

D. Aircraft parking positions on the Passenger Terminal Apron Area at the Terminal Building will be assigned on a preferential use basis. Subject to the provisions of Section 4.02, Airline will have the right and first priority in using aircraft parking position(s) assigned to it on a preferential use basis to accommodate its flights and the scheduled non-charter flights of any

Affiliated Airline Company; provided, however, Aviation Director, may after coordination with local Airline management, assign any such aircraft parking position(s) for use by others in periods when not scheduled for use by Airline, in accordance with the following procedures: (i) non-preferentially assigned facilities shall be utilized first to accommodate airlines requiring facilities at the Airport; (ii) facilities and aircraft parking positions assigned to Non-Signatory Airlines shall be utilized second; and (iii) facilities and aircraft parking positions preferentially assigned to Signatory Airlines shall be utilized last. Any facilities and aircraft parking positions preferentially leased and assigned to Signatory Airlines shall be utilized in the inverse order of their degree of utilization by such Signatory Airlines. Such utilization shall be determined by taking into account the following: (i) the average number of flights (those performed by Airline and any scheduled non-charter of an Affiliated Airline Company and those handled by Airline) per aircraft parking position per day which shall be calculated by dividing the total of number of flight departures per day from all of Airline's Preferentially Assigned Aircraft Parking Positions by the total number of Airline's Preferentially Assigned Aircraft Parking Positions; (ii) scheduling considerations; (iii) aircraft parking position locations; and (iv) other operational considerations.

E. Aircraft parking position(s) on the Passenger Terminal Apron Area are to be assigned initially to Airline at the Terminal Building as designated in Exhibit D.

F. Airline shall have the right and first priority to use the Passenger Loading Bridges serving Airline's Preferential Assigned Aircraft Parking Position(s) to accommodate Airline's arrivals and departures and the scheduled non-charter arrivals and departures of any Affiliated Airline Company, subject to the provisions of Sections 4.02 and 6.06.

G. Airline shall have the right to install Airport approved computer equipment at the holdroom gate counter not to exceed two (2) fixed location terminals and associated support equipment, counter insert, and Airline logos in each holdroom adjacent to Airline's Preferentially Assigned Aircraft Parking Position(s). Portable, laptop, hand held, and other computer equipment of a similar nature shall not be limited provided the usage of such equipment does not interfere unduly with the efficient usage of the holdroom area. Non-preferential user(s) of such holdroom shall have the right to install, at their own expense, a computer terminal in an unused counter insert or provide portable computer equipment to accommodate its passengers in such holdroom(s). Non-preferential user(s) shall not have the right to any signage other than identification and flight information on the back wall of the holdroom kiosk.

H. Airline shall have the right to use the inbound and outbound baggage conveyor devices on a common use basis.

I. Airline shall have the right to install free standing, movable passenger guidance stanchions, of uniform color and design, in the area directly in front of their exclusively assigned ticket counter to a distance not greater than three feet beyond the first terminal support column. Airline, by placing said stanchions, agrees to promptly remove said stanchions at the end of each business day to allow for efficient cleaning processes. Airline further agrees to keep the stanchion area free of all other objects.

J. Airline and City shall cooperate as is reasonably necessary as City develops and implements a common-use computer system for use by all Airlines and their passengers at the Airport. As City installs a common-use computer system, and after such system is successfully tested and is operational in accordance with reasonable industry standards, Airline shall remove from areas of the Airport where the common-use system is deployed all of its property that is incompatible with, or redundant to, the common-use system.

Section 4.02. Reassignment of Preferentially Assigned Aircraft Parking Position(s) at Passenger Terminal Apron Area and Passenger Loading Bridge(s)

From time to time, Aviation Director may reassign Passenger Loading Bridges and Preferentially Assigned Aircraft Parking Position(s) on the Passenger Terminal Apron Area in order to (i) improve the overall utilization or functionality of the Terminal Building or the Passenger Terminal Apron Area; (ii) accommodate the needs (not otherwise accommodated) of an Air Transportation Company not currently serving but formally committed to sign a Scheduled Airline Operating Agreement and Terminal Lease; or (iii) accommodate any additional needs of a Signatory Passenger Airline if existing vacant facilities are inadequate for such needs.

A. Aviation Director shall give Airline (and any other Air Transportation Company affected by such planned reassignment) written notice of its proposal for such reassignment.

B. Within sixty (60) days of delivery of such notice, Airline shall have the opportunity to meet with the Aviation Director to present oral or written comments on the proposed reassignment and to offer one or more alternate proposals.

C. Aviation Director shall give due consideration to Airline's comments prior to making a final decision as to the proposed reassignment. The final decision imposed by the Aviation Director shall not require Airline to:

1. Incur any expense that it does not agree to incur to relocate its operation to other premises, or require any Air Transportation Companies other than the Air Transportation Company causing such relocation to incur such expense;
2. Accept premises not reasonably comparable in size, design, function and finish to the location transferred from nor maintain remote, split, or otherwise inconvenient facilities;
3. Pay at its new location rates per linear or square foot in excess of the linear or square footage rates for the location transferred from;
4. Lease square footage or lineal footage at its new location in excess of the square or lineal footage at the location transferred from.

D. The following shall be considered guidelines for relocation assistance in an imposed decision:

1. All reasonable costs necessitated by relocation shall be funded by the Air Transportation Company or other rent paying tenant who is benefiting from or requests the relocation. City, at its sole discretion, may pay for said costs, or any portion thereof, through the Airport's surplus revenue sub-account or other non airline rate base funding source, so long as such payment does not result in any Air Transportation Company receiving rights or privileges at the Airport more favorable than those received by Airline.

2. With respect to any Airline trade fixture and other movable property, if removal from the existing premises is possible without causing damage to the fixture or other property and not unreasonably burdensome to Airline, Airline shall be entitled to such relocation and not to a new fixture or to new property or to reimbursement for them. If removal is not possible without causing damage to the fixture or other property and Airline elects in its sole discretion not to replace such fixtures or property at its new location, the undepreciated capital cost of such fixtures or property as of the relocation date (depreciated over a ten (10) year period on a straight line basis) shall be deemed a cost necessitated by relocation under Section 4.02 (D)(1) and payment to Airline of such shall be in order.

E. The final decision imposed by the Aviation Director shall be in writing and shall provide Airline with reasonable detail in support of the decision. In making the final decision the Aviation Director shall at a minimum consider the following:

1. The actual, reasonable requirements of Airline for Terminal Building space to accommodate its operations at the Airport;

2. The Airport Master Plan with latest revisions;

3. The compatibility of operations should Airline be required to share Airport space or facilities with another Air Transportation Company including, but not limited to, labor relations, passenger volumes, schedules and market competition;

4. The current and planned schedule and activity level of Airline being considered for relocation as compared to the current and planned schedule and activity levels of all other Air Transportation Companies at the Airport;

5. The selection of the option that is least disruptive to all airlines at the Airport and that supports the requirements necessitating the relocation.

F. Following a decision by Aviation Director to reassign Airline's Preferentially Assigned Aircraft Parking Position(s), Aviation Director shall give Airline no less than thirty (30) days' (or other time frame as is reasonable and agreed to) written notice of the release of Airline's responsibility for, and rights pertaining to, such aircraft parking position(s), after which period (and said relocation) Aviation Director will take control of such premises for the purpose of reassignment.

Section 4.03. Reassignment of Exclusive Use Space

From time to time, Aviation Director may reassign those portions of Leased Premises designated in Exhibit C as Exclusive Use Space as set forth in Section 4.01(B) to: (i) improve the overall utilization or functionality of the Terminal Building or the Passenger Terminal Apron Area; (ii) accommodate the needs (not otherwise accommodated) of an Air Transportation Company not currently serving, but formally committed to sign a Scheduled Airline Operating Agreement and Terminal Lease; or (iii) accommodate any additional needs of a Signatory Passenger Airline if existing vacant facilities are inadequate for such needs.

A. Aviation Director shall give Airline and other Air Transportation Companies affected by such planned reassignment not less than 120 days prior written notice of its proposal for such reassignment.

B. Within sixty (60) days of delivery of such notice, Airline shall have the opportunity to meet with the Aviation Director to present oral or written comments on the proposed reassignment and to offer one or more alternate proposals.

C. Aviation Director shall give due consideration to Airline's comments prior to making a final decision as to the proposed reassignment. The final decision imposed by the Aviation Director shall not require Airline to:

1. Incur any expense that it does not agree to incur to relocate its operation to other premises, or require any Air Transportation Companies other than the Air Transportation Company causing such relocation to incur such expense;
2. Accept premises not reasonably comparable in size, design, function and finish to the location transferred from;
3. Pay at its new location rates per square foot in excess of the square footage rates for the location transferred from;
4. Lease square footage or lineal footage at its new location in excess of the square or lineal footage at the location transferred from.

D. The following shall be considered guidelines for relocation assistance in an imposed decision:

1. All reasonable costs necessitated by relocation shall be funded by the Air Transportation Company or other rent paying tenant who is benefiting from or requests the relocation. City, at its sole discretion, may pay for said costs, or any portion thereof, through the Airport's surplus revenue sub-account or other non airline rate base funding source, so long as such payment does not result in any Air Transportation Company receiving rights or privileges at the Airport more favorable than those received by Airline.

2. With respect to any Airline trade fixture and other movable property, if removal from the existing premises is possible without causing damage to the fixture or other property and not unreasonably burdensome to Airline, Airline shall not be entitled to a new fixture or to new property or to reimbursement for them. If removal is not possible without causing damage to the fixture or other property and Airline elects in its sole discretion not to replace such fixtures or property at its new location, the undepreciated capital cost of such fixtures or property as of the relocation date (depreciated over a ten (10) year period straight line basis) shall be deemed a cost necessitated by relocation under Section 4.03(D)(1) and payment to Airline of such shall be in order.

E. The final decision imposed by the Aviation Director shall provide Airline with reasonable detail in support of the decision. In making the final decision the Aviation Director shall at a minimum consider the following:

1. The actual, reasonable requirements of Airline for Terminal Building space to accommodate its operations at the Airport;
2. Airport Master Plan with its latest revisions;
3. Compatibility of operations should Airline be required to share Airport space or facilities with another Air Transportation Company including, but not limited to, labor relations, passenger volumes, schedules and market competition;
4. The current and planned schedule and activity level of the Airline being considered for relocation as compared to the current and planned schedule and activity level of all other Air Transportation Companies at the Airport;
5. The selection of the option that is least disruptive to all airlines at the Airport and that supports the requirements necessitating the relocation.

F. Following a decision by Aviation Director to reassign Leased Premises in accordance with this Section 4.03, Aviation Director shall give Airline thirty (30) days' (or other time frame as is reasonable and agreed to) written notice of the release of Airline's responsibility for, and rights pertaining to, such space under this Agreement, after which period (and said relocation) Aviation Director will take control of such premises for the purpose of reassignment or construction.

Section 4.04. Reassignment of Leased Space during Construction

Aviation Director shall temporarily reassign leased space during construction after reasonable written notice and detailed construction drawings are provided to Airline. During the construction period, Airline shall pay appropriate charges only for those areas designated and utilized by Airline for its use. To the extent permissible under Generally Accepted Accounting Principles, the costs associated with the reassignment and relocation shall be borne and charged by the City to the construction project necessitating said relocation. During such time, interference with the operations of Airline shall be minimized as much as is reasonably practicable.

Section 4.05. Surrender of the Premises

A. Airline covenants and agrees that on expiration of the term of this Agreement, or on earlier termination as hereinafter provided, or on reassignment of premises as heretofore provided, it will peaceably surrender possession of the premises hereunder in good condition, reasonable wear and tear, acts of God, fire, and other casualties excepted, and City shall have the right to take possession of said premises. City shall not be required to give notice to quit possession at the expiration date of the term of this Agreement. The City's acceptance of possession and the Airline's surrender of the premises shall not impair any rights or remedies the City may otherwise have hereunder.

B. Airline shall have the right, on expiration or early termination and within thirty (30) days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by it at its expense, in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees and subject to the requirement that Airline repair or pay City for any damages occasioned by such removal except to the extent caused by the willful misconduct or negligence of City, its agents or its employees. In the event any of Airline's property remains on the premises after such thirty (30) day period, Airline agrees to reimburse City for any net costs incurred by City if City elects to remove or dispose of Airline's property after such thirty (30) day period.

C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the land on which it is located, and title thereto shall thereupon vest in City.

Section 4.06. Holding Over

Should Airline use the Leased Premises without the written consent of City after this Agreement has terminated, Airline shall be deemed a tenant at sufferance during the period of such use and subject to fees, charges, and provisions as set forth in the Rules and Regulations. In such event, City shall have all of the remedies provided under applicable laws and either party may terminate on at least ten (10) days prior written notice. Airline further agrees that upon such termination, the leased premises shall be delivered to City in accordance with the requirements set forth in Section 4.05 above.

Section 4.07. Access

A. Subject to the provisions hereof, the Rules and Regulations, and such restrictions as Airline may impose with respect to its Exclusive Use Space, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the rights of access, ingress and egress to the Leased Premises and to public areas and public facilities of the Terminal Building.

B. The rights provided for in Section 4.07(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that is not authorized under the provisions hereof unless expressly authorized by City.

C. Except as otherwise provided in this Agreement, City shall have the right at any time to close, relocate, reconstruct, change, alter, or modify, any such means of access, ingress or egress provided for use by Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees pursuant to this Agreement or otherwise, either temporarily or permanently; provided that reasonable notice to Airline and a reasonably convenient and adequate alternative means of access, ingress, and egress shall exist or be provided. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Agreement so long as Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees have a reasonably convenient and adequate means of access, ingress, and egress; provided, however that City's interference with the operations of Airline shall be minimized as is reasonably practicable.

Section 4.08. Security Screening Operations

A. Airline agrees and acknowledges TSA's authority over the security screening operation.

B. Airline and other Air Transportation Companies are responsible to pay, in proportionate share, any security costs required by TSA or any other federal authority for the operation of the Airport. Any security reimbursements received by City from Federal or State agencies (including the TSA) will reduce the security charges to Airline by the amount of such reimbursement allocable to Airline. City will attempt to collect any security fees and rentals directly from TSA.

ARTICLE 5 CAPITAL IMPROVEMENT PROGRAM

Section 5.01. Capital Improvements

A. In conjunction with Section 7.03(A) of this Agreement, on or before August 15 of each year, City shall notify Signatory Passenger Airlines and Signatory Cargo Airlines of a budget calendar establishing dates for review of the following Fiscal Year's Capital Improvement Program budget (e.g. for FY 2009-2010 which begins on July 1, 2009, the budget calendar shall be established on July 15, 2008). On or before November 15 (or other date contained within the budget calendar), City shall submit to Airline a report containing the following and notification of the date for Airline review and consultation. In all cases, the review meeting shall be conducted prior to the submittal of the Capital Improvement Program to the Airport Board or City. The notice shall include, for each Capital Improvement, the following:

1. A description of the proposed Capital Improvement, together with project timing, the estimated purchase price and construction cost, and a schedule of costs to be added to the rate base pursuant to Article 7;
2. A statement of justification for the Capital Improvement and its price and costs;
3. The allocation of expenses and costs within Airport Cost Centers as a result of the Capital Improvement and its related costs;
4. The Aviation Director's preferred means of financing the Capital Improvement and its related costs.

B. Additionally, within the time frames established above, City shall provide Airline and other Signatory Passenger Airlines with the corresponding proposed five (5) year Capital Improvement Program for Airline review. City shall include information detailing the projected project timing, the estimated cost, the allocation of costs within Airport Cost Centers, and the projected means of financing.

Section 5.02. Reviewed Capital Improvements

The Capital Improvements listed in Exhibit E have been reviewed by Airline in accordance with Section 5.01

ARTICLE 6 RENTALS, CHARGES, AND FEES

Section 6.01. General

In return for use of the premises, facilities, rights, licenses, and privileges granted hereunder and for the undertaking of City, Airline agrees to pay City during the term of this Agreement, without deduction or set-off, the certain rentals, fees, and charges as set forth herein.

The financial methodology of the Agreement can best be described as a hybrid, meaning it contains aspects of both the Compensatory Form of Agreement (generally defined as an agreement in which an airline agrees to compensate an airport for its use of the facilities, and whereby rates for leasing gates and for landing and take-off slots are specifically spelled out in the agreement), and the Residual Form of Agreement (generally defined as an agreement in which airlines are accountable for additional costs of the airport not covered by previous payments as related to areas such as gates, landings, and ground-related revenues).

The Agreement divides the Airport into five cost centers as defined in Exhibits B and O. The Airport's costs related to three of these cost centers are generally recovered through charges to Air Transportation Companies. Costs related to the terminal are recovered through the Terminal Cost Center in the form of Terminal Building Rent (Section 6.03), costs related to the airfield are recovered through the Airfield Cost Center in the form of landing fees (Section 6.04), and costs related to the Apron Areas are recovered through the Apron Area Cost Center in the form of Apron Fees (Section 6.05).

The Terminal Cost Center employs a modified Compensatory Form of Agreement, while the Airfield and Apron Cost Centers more closely resemble a Residual Form of Agreement. This Agreement also contains a Net Income sharing component as outlined in Section 7.10.

Section 6.02. Monthly Activity Reports

A. Airline shall furnish to Aviation Director on or before the tenth (10th) day of each month, an accurate report, in a format approved by Aviation Director, of Airline's (and its Affiliated Airline Companies') operations at the Airport during the preceding month, setting forth all data necessary to calculate the fees and charges due under this Agreement. Said report shall include for Airline and its Affiliated Airline Companies: (i) total number of Aircraft Landings for the month by type of aircraft, the Maximum Certificated Gross Landing Weight of each aircraft, and the Total Landed Weight for the month; (ii) the total number of Enplaning Passengers and Deplaning Passengers; (iii) the amount of cargo freight, mail, and express for such month; (iv) the activities of charter flights handled by or accommodated through the facilities of Airline; and (v) the number of occurrences by time and date when Airline's aircraft remained parked on non-eased areas of the Airport for periods exceeding 24 continuous hours. If Airline desires that its Affiliated Airline Company's landing fees be separated on its invoice from the City, Airline shall provide a breakout of its Affiliated Airline Companies' monthly flight activities in its Monthly Activity Report. Airline shall remain responsible for the payment to City of the full amount of the invoice, including without limitation the activities of Airline's Affiliated Airline Companies.

B. Airline agrees: (i) to provide to the Aviation Director on or before the first day of each Fiscal Year a projected flight schedule for all Airline and any Affiliated Airline Company flights to and from the Airport for the Fiscal Year; and (ii) notify the Aviation Director prior to any schedule changes affecting flights to or from the Airport.

C. Airline shall notify the Aviation Director in advance of all charter flights to be operated by or handled by Airline at the Airport.

Section 6.03. Terminal Building Space Rentals and Other Charges

A. Terminal Building Space Rentals. Airline shall pay to City for its Exclusive Use Space, Joint Use Space, and Common Use Space in the Terminal Building as set forth in Section 4.01, monthly rentals based on annual rental rates, with such rates to be calculated each Fiscal Year as set forth in Article 7. In the event that Airline suspends or ceases operations at the Airport, Airline shall continue to pay City for the lesser of twelve (12) months or the remaining term of this Agreement monthly rentals based on the annual rental rates calculated herein for the amount of its Exclusive Use Space in the Terminal Building unless that space is assigned to another rent paying tenant. However, for the period during which Airline is obligated to pay rent after suspending or ceasing operations at the Airport, the amount Airline shall pay monthly as rent shall not be less than the equivalent of the rental rate for 250 square feet of Exclusive Use Space in the Terminal Building.

B. Rental for Joint Use Space and Common Use Space shall be prorated according to the Joint Use Formula and Common Use Formula, respectively. If an Air Transportation Company that did not provide Scheduled Service to the Airport during the prior Fiscal Year begins providing Scheduled Service to the Airport and uses the service or space, or if an Air Transportation Company then providing Scheduled Service ceases serving the Airport and ceases using the service or space, the proration of Joint Use Space and Common Use Space costs will be recalculated by City pursuant to the Joint Use Formula and Common Use Formula, respectively, in consultation with the Signatory Airlines to take into account any such cessation or commencement of service.

C. Airline shall pay City reasonable charges as established by Rules and Regulations for each use of a Passenger Loading Bridges not preferentially assigned to Airline, of a holdroom area adjacent to a Passenger Loading Bridges, and of other terminal facilities and equipment.

Section 6.04. Landing Fees

Airline shall pay City monthly landing fees to be determined by multiplying the number of 1,000-pound units of Total Landed Weight for Airline and its Affiliated Airline Companies during the month by the then current landing fee rate established pursuant to Section 7.06.

Section 6.05. Passenger Terminal Apron Area

Airline shall pay City as monthly apron fees for operations conducted on the Passenger Terminal Apron Area a sum calculated and established pursuant to Section 7.07 herein.

Section 6.06. Aircraft Parking and Loading Bridge Surcharge

A. In addition to any other charges for which provision is made herein, Airline shall pay for its use of aircraft parking position(s) or loading bridge(s) as such charges may be established by City to discourage Air Transportation Companies from allowing their aircraft to remain upon the ramps and aprons adjacent to the Terminal Building for lengths of time that may interfere unduly with the use of those ramps and aprons by other Air Transportation Companies. Such charges shall be the same for all aircraft using said space and shall not be in excess of Five Dollars (\$5.00) for each full minute during which an aircraft remains at an aircraft parking position or loading bridge(s) for longer than one (1) hour for an arrival and two (2) hours for a turnaround if, upon expiration of such period, the aircraft remains at such space longer than fifteen (15) minutes after due notice to remove the same is given by Aviation Director to Airline's representative at the Airport. Subject to prior written approval of the Aviation Director, Airline may use parking position(s) for longer than specified without incurring said charges if Airline meets the reasonable conditions imposed by the Aviation Director as a part of said approval.

B. Section 6.06(A) shall apply to Airline's Preferentially Assigned Aircraft Parking Position(s) or Loading Bridge only when:

1. Airline's Preferentially Assigned Aircraft Parking Position is occupied by Airline's aircraft at a time when the parking position is scheduled for use by another Air Transportation Company providing passenger service and no other alternate non-preferentially assigned aircraft parking position is available or capable of safely providing the desired aircraft parking space in accordance with procedures of assignment established under Section 4.01(D); and
2. Airline's aircraft has occupied that parking position longer than the time limits specified in Section 6.06(A) for the relevant operation; and
3. No approval has been granted by the Aviation Director for Airline to exceed the time limits specified in Section 6.06(A).

C. Notwithstanding Section 6.06(B), Section 6.06(A) shall not apply to Airline's Preferentially Assigned Aircraft Parking Position(s) or Loading Bridge in the following circumstances:

1. Airline's aircraft's departure from the parking position is delayed by condition(s) beyond the control of Airline and the Aviation Director agrees that because of said condition(s) the aircraft can remain at the parking position; or
2. Airline's aircraft remains in the parking position overnight for a period of twelve (12) hours or less and the aircraft parking position is not scheduled for use by another Air

Transportation Company providing passenger service subject to provisions of Section 4.01(D).

Section 6.07. Equipment Parking Areas

Equipment parking areas, set forth in Exhibit I, shall be available for use by Airline in accordance with the Rules and Regulations. From time to time, Aviation Director may reassign Equipment Parking Areas when necessary to (i) achieve better balance in the overall usage of Passenger Terminal Apron Equipment Parking Areas; or (ii) to accommodate the needs (not otherwise accommodated) of an Air Transportation Company not previously serving the Airport which formally executes a Scheduled Airline Operating Agreement and Terminal Lease. Aviation Director's reassignment shall be reasonable and not place any unreasonable operational burdens on Airline.

Section 6.08. Payment Provisions/Interest on Overdue Amounts

A. Terminal Building space rentals, and equipment parking rentals, if applicable, shall be due and payable within thirty (30) days of the date of invoice.

B. Within 5 days of submittal of Airline's monthly activity report as provided in Section 6.02, Airline shall transmit to City payment for Landing Fees incurred by Airline and all of its Affiliated Airline Companies during said month, as computed by Airline pursuant to Section 6.04. The acceptance by City of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline.

C. All other charges or fees set forth in this Agreement shall be due within twenty (20) days of the date of the invoice; therefore City shall date the invoices within two (2) days of actual mailing or direct delivery to Airline.

D. Any monthly activity report not received by the due date shall be subject to a late report charge of \$10.00 per day from the due date until the report is received.

E. Any payment or other monetary obligation not paid and received by the due date shall bear interest at the lower of 1.5% per month or the maximum rate permitted by law, which interest shall accrue from the due date until the original payment or other monetary obligation and interest thereon are paid in full. Late payments shall be first applied to interest due and thereafter to reduce the principal amount.

Section 6.09. Performance Bond

A. Any Airline, other than an Affiliated Airline Company operating as an affiliate of a Signatory Passenger Airline, who has provided less than twelve (12) months of continual service at the Airport, shall be required to provide City with a payment and performance bond or other security in a form reasonably acceptable to City in the amount of: (i) Airline's and all of its Affiliated Airline Companies' estimated landing fees for a three (3) month period as determined

on the basis of Airline's current published flight schedule multiplied by the current landing fee rate; (ii) Airline's Terminal Building Space Rentals for the same three (3) month period as determined on the basis of Airline's Leased Premises multiplied by the established rental rates; (iii) Airline's estimated Passenger Terminal Apron Area fees for the same three (3) month period as determined by the applicable cost allocation methodology in Section 7.07; (iv) Airline's estimated security fees for the same three (3) month period as determined on the basis of the Airline's estimated enplanements multiplied by the current security cost; and (v) Airline's estimated Passenger Loading Bridge Fee for the same three (3) month period as determined on the basis of the Airline's planned use of a holding room where a City-owned bridge is located multiplied by the current Passenger Loading Bridge fee. Said security shall remain in effect until the Airline has demonstrated twelve (12) months of continuous performance of timely payments. Said security shall not be released without written authorization from the Aviation Director.

B. If at any time during the term of this Agreement, Airline fails to make payments in accordance with the payment provisions of Section 6.08, and thereafter fails to pay any past due amount within ten (10) business days after City sends written notice thereof, Aviation Director may require Airline to provide to City a performance bond or other security in a form reasonably acceptable to Landlord in the same amounts indicated in Section 6.09(A) above. The amount of the security required pursuant to this section and as calculated above may be adjusted by Aviation Director to more properly reflect current activity as Airline's flight activity or rental space may change or as the Landing Fee or space rental rates may change. The bond or security deposit shall remain in effect until the Airline has demonstrated twelve (12) continuous months of timely payments. The bond or security deposit shall not be released without written authorization from the Aviation Director.

C. Failure to provide such bond or security deposit within thirty (30) days of demand by the Aviation Director pursuant to this Section 6.09 shall constitute an event of default under Article 13. Document(s) evidencing a bond or security deposit must provide that the same shall remain in full force and effect for a period of sixty (60) days following termination, expiration or cancellation of this Agreement or such other date as may be agreed to by Airline and Aviation Director.

D. If Airline fails to make timely payments under Section 6.08 while a bond or security deposit is in effect under this Section 6.09, City shall have the right, after ten (10) days written notice to Airline, to forfeit, take, and use so much of such security as may be necessary to satisfy such payment obligation in full, including interest thereon, and Signatory Passenger Airline shall within ten (10) days thereafter provide City with a replacement security for the full amount so used.

Section 6.10. Security Costs

A. Personnel Costs

1. Any normal costs incurred by City to meet Required Security Personnel requirements will be allocated seventy-five percent (75%) as Terminal Building Area Costs and twenty-five percent (25%) as Airfield Area Costs. Any costs for Required Security Personnel

directly related to modifications in TSR security measures will be allocated to the Terminal Building Area Costs or Airfield Area Costs based on the primary reason for the modification as determined by the Aviation Director.

2. That portion of Required Security Personnel costs allocated as Terminal Building Area Costs for any month pursuant to this section shall be allocated among all Air Transportation Companies using the Terminal Building on the basis of each such Air Transportation Company's pro rata share of their Enplaning Passengers to total Enplaning Passengers for all such Air Transportation Companies during that month. Billings to recover the Required Security Personnel costs incurred for a particular month shall be invoiced by City as soon as is reasonable following the end of such month.

3. That portion of Required Security Personnel costs allocated as Airfield Area Costs shall be collected in accordance with the provisions of Section 7.06.

B. Other TSR Security Costs

Air Transportation Companies providing Scheduled Service shall pay City, on a monthly basis, amounts sufficient to reimburse City for its appropriate share of all costs of Airport security required by the TSA other than for Required Security Personnel. Such costs shall be appropriately proportioned among the benefited parties in the same manner as identified in Section 6.10(A), and shall be subject to the provisions of Section 4.08(B) of this Agreement.

C. General Security (non TSR)

"General Security" costs are defined as any reasonable cost not classified under TSR including but not limited to ground traffic control on the Airport. General Security costs shall be allocated to Airport Cost Centers as follows: seventy percent (70%) to Parking and Roadways Area; ten percent (10%) to Buildings and Ground Area; ten percent (10%) to Terminal Building Area; and ten percent (10%) to the Airfield Area.

Section 6.11. No Other Fees and Charges

Except as provided in this Agreement, no further rentals, fees, tolls, or charges shall be charged Airline by City in connection with the matters addressed herein. However, City reserves the right to assess and collect a reasonable passenger facility charge, use fee, or similar charges on Airline's passengers using the Airport, subject to such methods of collection as may be contemplated or expressly provided by Rules and Regulations. Airline agrees to cooperate with the collection and remittance (less reasonable cost of collection and administration in accordance with law) to City of such fees or charges. City further reserves the right to implement a reasonable charge for the use, upkeep and maintenance of a common-use computer system at the Airport.

Section 6.12. Non-Signatory Airline Landing Fees

City shall charge each Air Transportation Company that is not a Signatory Passenger Airline or Signatory Cargo Airline a landing fee rate not less than one hundred and forty percent (140%) of the landing fee rate then being charged by City to Signatory Passenger Airlines and Signatory Cargo Airlines.

Section 6.13. Passenger Loading Bridge Fees

Charges for repair and maintenance to Passenger Loading Bridges shall be recovered through a fee to the Signatory Passenger Airlines by accumulating the costs in the Passenger Loading Bridge Area Cost Center and dividing the cost by the total number of Passenger Loading Bridges in place. The final charge will then be invoiced, pro-rata, to each airline preferentially assigned to the holdroom where City-owned passenger loading bridges are located.

ARTICLE 7 RECALCULATION OF RENTALS, FEES, AND CHARGES

Section 7.01. General

Rentals, fees, and charges will be reviewed and recalculated annually based on the principles and procedures set forth in this article and elsewhere in this Agreement, to be effective July 1 of each Fiscal Year beginning July 1, 2008.

Section 7.02. Accounting Records

A. City shall maintain records that document the following items: (i) Operating Expenses; (ii) Annual General Obligation Bond Debt Service; (iii) Annual Airport Revenue Bond Debt Service; (iv) Amortization of the cost of Capital Improvements financed by City from other than General Obligation Bonds, Airport Revenue Bonds, or grants-in-aid; (v) Equipment and Capital Outlays; (vi) any annual funding requirements pursuant to the applicable Bond Resolution(s); and (vii) any other costs to be included in the calculation of airline rates, fees, and charges.

B. For purposes of keeping Airline informed as to the financial performance of the Airport, City shall provide to Airline its annual budget and audited financial statements upon request as well as any supplemental Airport financial data existing to assess the adequacy of rates and charges established under this Agreement.

C. For three years after the end of any Fiscal Year, City will retain records as are customarily maintained in accordance with generally accepted accounting principles to support rentals, fees, and charges applicable to that Fiscal Year. Airline, at its expense, shall have the right, using an independent certified public accountant, to audit City's books and records relating to such expenses for any Fiscal Year during the three year period for which the records are retained; provided, however, Airline shall not be entitled to audit City's books and records relating to such expenses more than one (1) time with respect to any Fiscal Year. In the event Airline's audit reflects that City has overcharged Airline for such expenses, City shall promptly reimburse Airline for such overcharge. If such audit reveals that City has undercharged Airline for such expenses, Airline shall promptly pay City the amount of such undercharge. If such audit reveals that City has overcharged Airline for such expenses by more than five percent (5%), City shall promptly reimburse Airline for the reasonable cost of such audit in addition to the entire overcharge. The provisions of this Section shall survive the termination or expiration of this Agreement for a period not to exceed three years.

Section 7.03. Coordination Procedures--Budget Review and Calculation of Rentals, Fees, and Charges

A. On or before August 15 of each year, City shall provide Signatory Passenger Airlines and Signatory Cargo Airlines with a budget calendar establishing dates for the Signatory Passenger Airlines and Signatory Cargo Airlines to review the following Fiscal Year's budget (e.g. a budget calendar shall be distributed by August 15, 2008, related to the budget period beginning July 1, 2009, and ending June 30, 2010). On or before August 15 of each year, Airline shall submit to

City, in writing, its total landed weight forecast for that Fiscal Year. In the absence of such information from Airline, City shall estimate the information based on the most current available data. On or before November 15 (or other date as contained within the budget calendar) of each year, City shall submit to Airline the following reports and notify Airline of a date for review and consultation of the budget for the following Fiscal Year. In all cases, the airline review meeting shall be conducted prior to the submittal of budget information to the Airport Board or City Council.

1. City's proposed Annual Operating Budget and Capital Improvement Program for the next Fiscal Year, including all estimated Operating Expenses, Annual Airport Revenue Bond Debt Service and Annual General Obligation Bond Debt Service, and proposed expenditures for Capital Improvements for the Airport.
2. City's calculations of proposed airline rentals, fees, and charges for the Fiscal Year, which shall be based on the proposed Annual Operating Budget and the procedures as set forth in this Agreement. For purposes of these calculations, City shall use the latest approved Capital Improvement Program.

B. In accordance with the budget calendar and Airline notification provided for in Section 7.03(A), a meeting shall be scheduled between Aviation Director (or his/her designee) and the Signatory Passenger Airlines and Signatory Cargo Airlines to discuss the proposed Annual Operating Budget and the calculation of Air Transportation Company rentals, fees, and charges. City shall give due consideration to any comments and suggestions of Airline regarding the proposed Annual Operating Budget and the calculations of the proposed rentals, fees, and charges.

C. City shall adopt an Annual Operating Budget and Capital Improvement Program that may include recommended revisions made as a result of City's discussions with Signatory Passenger Airlines and Signatory Cargo Airlines and as a result of City's budgetary review process. City shall promptly furnish Airlines with a copy of such approved Annual Operating Budget and Capital Improvement Program together with the calculation of rentals, fees, and charges that will become effective as of the first day of the Fiscal Year.

D. If, for any reason, the Annual Operating Budget and Capital Improvement Program have not been adopted by City as of the first day of any Fiscal Year, the rentals, fees, and charges in effect during the preceding Fiscal Year shall continue in effect until (i) the new Annual Operating Budget and Capital Improvement Program have been adopted by City; and (ii) City has calculated the rentals, fees, and charges in accordance therewith. The new rentals, fees, and charges shall then be made effective retroactive to the first day of such Fiscal Year and shall be payable by invoice therefore to Airline.

Section 7.04. Calculation of Basic Terminal Building Area Rental Rate

Basic Terminal Building Area rental rates shall be calculated in the following manner in accordance with Exhibits F and G:

A. City's estimated total "Terminal Building Area Cost" for the Fiscal Year shall be calculated by totaling the following estimated amounts:

1. The total of direct and indirect Operating Expenses allocable to the Terminal Building Area less amounts to be received pursuant to Section 6.10.
2. Equipment and Capital Outlays allocable to the Terminal Building Area.
3. The pro rata portion of Annual General Obligation Bond Debt Service allocable to the Terminal Building Area as depicted in Exhibit O.
4. The pro rata portion of Annual Airport Revenue Bond Debt Service (plus the pro rata portion of Coverage, if any, needed to meet Section 8.02(B) requirements) allocable to the Terminal Building Area as depicted in Exhibit O.
5. The pro rata portion of any required deposits to the reserve accounts established pursuant to the Bond Resolution(s) allocable to the Terminal Building Area as depicted in Exhibit O.
6. The annual amortization of the cost of those Capital Improvements that have been substantially completed before July 1 of the Fiscal Year and that are allocable to the Terminal Building Area. Such annual amortization shall be computed using straight-line depreciation over economic lives for each capital item determined by City in accordance with generally accepted accounting principles. In addition, City shall charge interest on the unamortized costs at a rate of interest equivalent to City's then current annual average yield on liquid investments, except that the annualized interest rate shall not exceed 18% unless agreed by Airline. No amortization charges shall be included in the calculation under this subsection for Capital Improvements funded with either (i) proceeds from General Obligation Bonds, Airport Revenue Bonds, Passenger Facility Charges; or (ii) grants-in-aid.
7. The amount of any assessment, judgment, settlement, or charge, net of insurance proceeds, to become payable by City relating to the operation or maintenance of the terminal building.

B. Each year City shall calculate the "Terminal Building Requirement" for the succeeding Fiscal Year by subtracting from the Terminal Building Area Cost calculated in Section 7.04(A) above: (i) 50% of the estimated Terminal Building Area concession revenue (including rental car revenues); (ii) 100% of the rental of rentable basement and second floor space; (iii) the prorated share of baggage claim area charges of Air Transportation Companies not providing Scheduled Service served by third party ground services operator; and (iv) 100% of telephone system revenues generated by Terminal Building tenants.

C. The estimated Terminal Building Area Requirement for the Fiscal Year will then be divided by the total amount of Rentable Space less rentable basement and second floor space to determine the "Terminal Building Basic Rental Rate" per square foot.

D. As soon as possible following the close of a Fiscal Year, actual Terminal Building Area Costs attributable to the Terminal Building Area shall be determined by City for such Fiscal Year and the difference between the actual Signatory Passenger Airline Basic Rental Requirement and the Signatory Passenger Airline basic space rentals billed shall be paid, credited, or collected per the provisions of either Section 7.10 or Section 7.11.

Section 7.05. Minimum Terminal Building Rental Rate

Notwithstanding the rental rate calculation procedure described in Sections 7.04 above, the average rental rate paid by the Signatory Passenger Airlines in each Fiscal Year shall not be less than the rate obtained by dividing the total of the following pro rata portion of (i) Annual General Obligation Bond Debt Service; (ii) Annual Airport Revenue Bond Debt Service; and (iii) budgeted deposits to reserve accounts established pursuant to the Bond Resolution(s) by the total area of enclosed space in the terminal building.

Section 7.06. Calculation of Landing Fee Rates

A landing fee per 1,000-pound unit of Maximum Certificated Gross Landed Weight shall be calculated in each Fiscal Year in the following manner and in accordance with Exhibit G:

A. City's estimated "Airfield Area Cost" for the Fiscal Year shall be calculated by totaling the following estimated amounts:

1. The total of direct and indirect Operating Expenses allocable to the Airfield Area less eight percent (8%) of which shall be allocated to the Apron Area as referenced in Section 7.07 and generally depicted in Exhibit O.

A fixed percentage of Airfield costs are allocated to the Apron Cost Center largely because a percentage of Airfield operational expenses (materials and labor) are, in fact, attributable to the aprons. Absent a tedious accounting of such costs it is not possible to charge these expenditures to the Apron. Therefore, both parties agree that a percentage of eight percent (8%) shall be employed to allocate Airfield costs to the Apron Cost Center.

To compare this percentage to square footages of airfield pavement, the apron area square footage is presently approximately 3.1 million and the total airfield pavement is 11.4 million, for a total apron percentage of 28%.

In addition to the fixed allocation of Airfield costs, other direct apron costs are added to determine total operating costs for the aprons as generally depicted in Exhibit O.

2. Equipment and Capital Outlays allocable to the Airfield Area.
3. The pro rata portion of Annual General Obligation Bond Debt Service allocable to the Airfield Area.

4. The pro rata portion of Annual Airport Revenue Bond Debt Service (plus the pro rata portion of Coverage, if any, needed to meet Section 8.02(B) requirements) allocable to the Airfield Area.
 5. The pro rata portion of any required deposits to the reserve accounts established pursuant to the Bond Resolution(s) allocable to the Airfield Area.
 6. The annual amortization of the cost of those Capital Improvements that have been substantially completed before July 1 of any year and that are allocable to the Airfield Area. Such annual amortization shall be computed using straight-line depreciation over economic lives for each capital item determined by City in accordance with generally accepted accounting principles. In addition, City shall charge interest on the unamortized costs at a rate of interest equivalent to City's then current annual average yield on liquid investments, except that the annualized interest rate shall not exceed 18 % unless agreed by Airline. No amortization charges shall be included in the calculation under this section for Capital Improvements funded with either (i) proceeds from General Obligation Bonds, Airport Revenue Bonds, Passenger Facility Charges; or (ii) grants-in-aid.
 7. The amount of any assessment, judgment, settlement, or charge, net of insurance proceeds, to become payable by City, other than those amounts attributable to the terminal building or air cargo buildings, relating directly to Airport for its operations or maintenance.
- B. City shall annually estimate the Net Airfield Area Cost for the Fiscal Year by subtracting the estimated military airfield use fee from the Airfield Area Cost calculated in Section 7.06(A).
- C. City shall calculate the annual "Net Airfield Area Requirement" for the Fiscal Year by subtracting: (i) 100% of estimated retail gas sales; and (ii) 100% of the estimated gross revenue from farm land rental, from the Net Airfield Area Cost in Section 7.06(B).
- D. The estimated Net Airfield Area Requirement for the Fiscal Year will then be divided by the estimated Total Landed Weight of all aircraft for all Aircraft Landings during the Fiscal Year (excluding landings by military aircraft) to determine the "Landing Fee Rate" per 1,000 lbs. The Landing Fee Rate established for Signatory Passenger Airlines shall be the same as for Signatory Cargo Airlines.
- E. As soon as possible following the close of each Fiscal Year, the actual Signatory Passenger Airline and Signatory Cargo Airline landing fees shall be determined by City for such Fiscal Year based on actual costs, revenues and aircraft arrivals during that Fiscal Year. The difference between the actual Signatory Passenger Airline and Signatory Cargo Airline landing fees and the estimated Signatory Passenger Airline and Signatory Cargo Airline landing fees shall be paid, credited, or collected per the provisions of Section 7.10 or Section 7.11.
- F. City shall continue to use reasonable efforts to negotiate additional compensation from the Iowa Air National Guard for its proportionate share of costs of using the Airfield Area, including

but not limited to an increase in the military airfield use fee and in-kind capital improvements at the Airport.

Section 7.07. Calculation of Passenger Terminal Apron Area Fees

Passenger Terminal Apron Area cost allocation shall be calculated in the following manner, in accordance with Exhibit G:

A. Eight percent (8%) of the Airfield Area Operating Expenses, as established pursuant to Section 7.06(A), shall be allocated to the Apron Area Operating Expenses. The portion of the Apron Area Operating Expenses to be allocated to the Passenger Terminal Apron Area (the Passenger Terminal Apron Area Operating Expenses) shall be determined by multiplying the Apron Area Operating Expenses by the percentage of square footage that the Passenger Terminal Apron Area is of the total square footage of Apron Area pavement which is designed to bear loads greater than 60,000 lbs. After establishing the foregoing amount for the Passenger Terminal Apron Area Operating Expenses, City shall then add to that amount the following items to compute the Passenger Terminal Apron Area Costs:

1. The pro rata portion of any Equipment and Capital Outlays allocable to the Passenger Terminal Apron Area.
2. The pro rata portion of Annual General Obligation Bond Debt Service allocable to the Passenger Terminal Apron Area.
3. The pro rata portion of Annual Airport Revenue Bond Debt Service (plus the pro rata portion of Coverage, if any, needed to meet Section 8.02(B) requirements) allocable to the Passenger Terminal Apron Area.
4. The pro rata portion of any required deposits to the reserve accounts established pursuant to the Bond Resolution(s) allocable to the Passenger Terminal Apron Area.
5. The annual amortization of the cost of those Capital Improvements that have been substantially completed before July 1 of any year and that are allocable to the Passenger Terminal Apron Area. Such annual amortization shall be computed using straight-line depreciation over economic lives for each capital item determined by City in accordance with generally accepted accounting principles. In addition, City shall charge interest on the unamortized costs at a rate of interest equivalent to City's then current annual average yield on liquid investments, except that the annualized interest rate shall not exceed 18 % unless agreed by Airline. No amortization charges will be included in the calculation under this section for amounts funded with either (a) proceeds from General Obligation Bonds, Airport Revenue Bonds, Passenger Facility Charges; or (b) grants-in-aid.
6. The amount of any assessment, judgment, settlement, or other charge, net of insurance proceeds, to become payable by City, other than those amounts attributable to the terminal building, air cargo buildings, Airfield Area or Cargo Apron Area, relating directly to operations or maintenance of Airport.

7. The amount of any legal or regulatory assessment, judgment, settlement, or any other charge, any costs for clean-up or remediation of an Environmental Condition, any penalties or fines assessed for violations of the Storm Water Pollution Prevention Plan(s), National Pollutant Discharge Elimination System permit or the Federal Clean Water Act (33 U.S.C. section 1251 et seq.) and its implementing regulations or Iowa Code Chapter 455B and its implementing regulations payable by City, subject to 16.02(F).

B. City shall calculate the annual "Passenger Terminal Apron Area Requirement" for the Fiscal Year by subtracting from the Passenger Terminal Apron Area Costs fifty percent (50%) of the revenue from ground handling fees collected by City.

C. The Passenger Terminal Apron Area Requirement for Airline shall then be calculated by a formula that (i) prorates ninety percent (90%) of the cost of that proportionate amount that Airline's (and its Affiliated Airline Companies) Total Landed Weight bears to the Total Landed Weight of all Air Transportation Companies (including their Affiliated Airline Companies) providing Scheduled Service, then (ii) ten percent (10%) of the cost based on that proportion which the Airline's number of assigned aircraft parking position(s) bears to the total number of assigned aircraft parking positions of all Air Transportation Companies providing Scheduled Service. Such formula shall be calculated using monthly Total Landed Weight statistics for the month prior to the immediately preceding month (e.g., for the month of September, the Total Landed Weight figures from the month of July will be used) and shall include Total Landed Weight of all flight operations of Air Transportation Companies not providing Scheduled Service being handled by Airline. If more than one Air Transportation Company is assigned to a gate, each of the Air Transportation Companies so assigned will be counted as assigned a separate aircraft parking position regardless of the number of actual aircraft parking positions at that gate. If an Air Transportation Company not currently providing Scheduled Service begins Scheduled Service to the Airport and uses a gate position, the Air Transportation Company will be required to pay this cost allocation fee and the formula will be recalculated to include the new Air Transportation Company's Total Aircraft Landings and assigned gate positions. Further, if an Air Transportation Company ceases serving the Airport or ceases using one or more of its assigned gate positions in accordance with its Agreement with City, then City will recalculate the Passenger Terminal Apron Area cost allocation fee due from the remaining Air Transportation Companies to account for those changes.

D. As soon as possible following the close of each Fiscal Year, the actual Passenger Terminal Apron Area cost allocation shall be determined by City for the Fiscal Year based on actual costs, Total Landed Weights, and the weighted average total number of assigned aircraft parking positions of all Air Transportation Companies during the Fiscal Year. The difference between actual Passenger Terminal Apron Area cost allocation and estimated Passenger Terminal Apron Area cost allocation shall be paid, credited, or collected per the provisions of Section 7.10 or Section 7.11.

Section 7.08. Calculation of Passenger Loading Bridge Fees

A Passenger Loading Bridge fee per City-owned Passenger Loading Bridge shall be calculated in each Fiscal Year in the following manner and in accordance with Exhibit P:

A. City's estimated "Passenger Loading Bridge Cost" for the Fiscal Year shall be calculated by totaling the following amounts:

1. The total of estimated direct and indirect Operating Expenses allocable to loading bridge repair and maintenance.
2. Equipment and Capital Outlays allocable to the passenger loading bridges.
3. The pro rata portion of Annual General Obligation Bond Debt Service allocable to the Passenger Loading Bridge Cost Center.
4. The pro rata portion of Annual Airport Revenue Bond Debt Service (plus the pro rata portion of Coverage, if any, needed to meet Section 8.02(B) requirements) allocable to the Passenger Loading Bridge Cost Center.
5. The pro rata portion of any required deposits to the reserve accounts established pursuant to the Bond Resolution(s) allocable to the Passenger Loading Bridge Cost Center.
6. The annual amortization of the cost of those Capital Improvements that has been or is substantially completed before July 1 of any year and that are allocable to the Airfield Area. Such annual amortization shall be computed at a rate of interest equivalent to City's current annual average yield on liquid investments using economic lives for each capital item determined by City in accordance with generally accepted accounting practices. No amortization charges will be included in the calculation under this section for amounts funded with either (a) proceeds from General Obligation Bonds, Airport Revenue Bonds, Passenger Facility Charges; or (b) grants-in-aid.

B. The estimated Passenger Loading Bridge Cost Center Requirement for the Fiscal Year will then be divided by the total number of City-owned loading bridges to determine the "Passenger Loading Bridge Area Fee" per loading bridge and will be charged to each airline preferentially assigned to the holdroom where City-owned bridges are located.

C. As soon as possible following the close of each Fiscal year, the actual Passenger Loading Bridge Fee shall be determined by City for such Fiscal Year based on actual costs. The difference between the actual Passenger Loading Bridge Fee and the estimated Passenger Loading Bridge Fee shall be paid, credited or collected per the provisions of Section 7.10 or Section 7.11.

Section 7.09. Extraordinary Rate Adjustments of Terminal Building Space Rentals, Landing Fees, Passenger Terminal Apron Area Fees, Passenger Loading Bridge Fees and Equipment Charges

In the event that, at any time during a Fiscal Year, any of the components of Terminal Building Area Cost, debt service or maintenance allocable to the airline equipment and finishes, Passenger Terminal Apron Area Cost, Airfield Area Cost, Passenger Loading Bridge Fees or the Total Landed Weight of all Signatory Passenger Airlines and Signatory Cargo Airlines varies upward or downward ten percent (10%) or more from the estimates used in setting Terminal Building Basic Rental Rates, Passenger Terminal Apron Area Fees, Passenger Loading Bridge Fees or Landing Fee Rates, such rates may be adjusted quarterly either up or down for the balance of such Fiscal Year to the extent deemed necessary by City to ensure that adequate revenues will be available from such fees to cover such estimated costs for the Fiscal Year. Prior to making such adjustment, City shall provide the Signatory Passenger Airlines and the Cargo Signatory Airlines with written notice and the opportunity to discuss such adjustment.

Section 7.10. Calculation of Credit of Specified Net Income

A. Within eight (8) months after the close of each Fiscal Year, City shall determine the amount of any adjustment required to be made hereunder because of overpayment or underpayment of rentals, fees, and charges for the immediately preceding Fiscal Year.

B. For each Fiscal Year, after making any adjustment required in Section 7.10(A), City shall distribute to the Signatory Passenger Airlines fifty percent (50%) of the Net Income, with the maximum distribution to all Signatory Passenger Airlines in aggregate not to exceed \$850,000. City shall retain all Net Income thereafter. Net Income shall be allocated to the Signatory Passenger Airlines as provided in Section 7.10(D). Distributable amounts shall be combined and reconciled with all Airline overpayments and underpayments in various cost centers, specifically all differences calculated in Sections 7.04(D), 7.06(E), 7.07(D), and 7.08(C); and

1. If Airline is currently operating at City, and
 - a. there is a net reconciled amount due to Airline, then City shall, subject to Paragraph C below, apply such amount as equal direct credits against Airline's Landing Fees over the remaining months of the then-current Fiscal Year; or
 - b. there is a net reconciled amount due to City, then such amount shall be assessed as additional Airline Landing Fees in equal monthly amounts over the remaining months of the then-current Fiscal Year.
2. If Airline is not currently operating at City, and
 - a. there is a net due to Airline, then City shall, subject to Paragraph C below, pay such amount to Airline; or

b. there is a net due to City, then such net amount due from Airline shall be invoiced to Airline and such amount shall be paid to City upon its receipt.

C. If Airline is past due in the payment of any rental, fee, or charge hereunder, the net due to Airline (as provided in Section 7.10(D)) shall be reduced by the amount of such past due rentals, fees, and charges.

D. As illustrated in Exhibit G, Airline shall be credited a portion of the distributable Net Income, after all adjustments, in an amount determined by Airline's percentage share of enplaned passengers reported by all Signatory Passenger Airlines during the applicable Fiscal Year. A Signatory Passenger Airline shall be eligible to earn credit for Net Income only during any Fiscal Year in which it provides Scheduled Service through the final day of that Fiscal Year.

Section 7.11. Calculation of Airline Contribution to Net Deficit

A. Within eight (8) months after the close of each Fiscal Year, City shall determine the amount of any adjustment required to be made hereunder because of overpayment or underpayment of rentals, fees, and charges for the immediately preceding Fiscal Year.

B. For each Fiscal Year, after making any adjustment required in Section 7.11(A), City shall collect from the Signatory Passenger Airlines fifty percent (50%) of the Net Deficit, with the maximum collectible amount from all Signatory Passenger Airlines in aggregate not to exceed \$850,000. City shall be responsible for Net Deficit thereafter. Net Deficit shall be collected from the Signatory Passenger Airlines as provided in Section 7.11(C). Collectible amounts shall be combined and reconciled with all Airline overpayments and underpayments in various cost centers, specifically all differences calculated in Sections 7.04(D), 7.06(E), 7.07(D), and 7.08(C); and

1. If Airline is currently operating at Airport, and

a. there is a net due to Airline, then City shall, subject to Paragraph C below, apply such amount as equal direct credits against Airline's Landing Fees over the remaining months of the then-current Fiscal Year; or

b. there is a net due to City, then such net amount due from Airline shall be assessed against Airline's Landing Fees in equal monthly amounts over the remaining months of the then-current Fiscal Year.

2. If Airline is not currently operating at Airport, and

a. there is a net due to Airline, then City shall, subject to Paragraph C below, pay such amount to Airline; or

b. there is a net due to City, then such net amount due from Airline shall be invoiced to Airline and such amount shall be due to City upon receipt.

C. As illustrated in Exhibit G, Airline shall be allocated a portion of the Net Deficit, after all adjustments, in an amount determined by Airline's percentage share of enplaned passengers reported by all Signatory Passenger Airlines during the applicable Fiscal Year. A Signatory Passenger Airline is responsible for its portion of the Net Deficit for any Fiscal Year in which it provides Scheduled Service at any time.

Section 7.12. Calculation of Credit of Prepaid Airline Coverage

A. Within eight (8) months after the close of the Fiscal Year, City shall determine, for the immediately preceding Fiscal Year, the amount in the Prepaid Passenger Airline Coverage Account pursuant to Section 8.02(A). To the extent the amount in the Prepaid Passenger Airline Coverage Account exceeds the balance required by Section 8.02(B), then City shall pay such excess amount to the Signatory Passenger Airlines as provided in Section 7.12(C).

B. If Airline is past due in the payment of any rental, fee, or charge hereunder, the excess amount payable to Airline (as provided in Section 7.12(C)) shall be reduced by the amount of such past due rentals, fees, and charges.

C. For the portion of excess Prepaid Passenger Airline Coverage related to the Terminal Building Area and the Passenger Terminal Apron Area, payments of such excess shall be allocated among the Signatory Passenger Airlines on the basis of each Signatory Passenger Airline's percentage share of total Signatory Passenger Airline Enplaned Passengers during the applicable Fiscal Year. For the portion of excess Prepaid Passenger Airline Coverage related to the Airfield Area, payments of such excess shall be allocated on the basis of each Signatory Passenger Airline's percentage share of total Signatory Passenger Airline Landed Aircraft Weight during the applicable Fiscal Year. Airline shall be eligible to earn credit for specified excess Prepaid Passenger Airline Coverage only while it provides Scheduled Service, except that Airline remains eligible for its pro rata share of excess Prepaid Airline Coverage generated while it was providing Scheduled Service.

ARTICLE 8
RELATIONSHIP OF THIS AGREEMENT TO THE BOND RESOLUTION
AND CREATION OF ACCOUNTS

Section 8.01. General

- A. This Agreement is made subject and subordinate to any Airport Bond Resolution enacted by City.
- B. In the event of conflicts between this Agreement and the Bond Resolution, the Bond Resolution shall govern.
- C. It is mutually understood and agreed that, so long as any bonds secured by a Bond Resolution are outstanding, the deposit and application of Airport revenues shall be governed by the Bond Resolution.
- D. Notwithstanding anything contained herein to the contrary, no such Bond Resolution or a subsequent amendment to the Bond Resolution shall limit any of the rights or enlarge any of the duties imposed on the Airline, except as to payment of Airline's allocable share of rental to support any bond indebtedness taken in accordance with this Agreement; provided however, if City adopts a Bond Resolution or a subsequent amendment to the Bond Resolution, either of which materially affects the method of calculation of Airline rentals and fees or materially affects the rights of Airline hereunder, Airline may, in writing, cancel this Agreement within thirty (30) days after the adoption date, and written notice to Airline of the Bond Resolution or amendment thereto by City.

Section 8.02. Creation and Funding of Prepaid Passenger Airline Coverage Account

- A. If a Bond Resolution permits the use of deposited funds (i.e., "rolling coverage") to meet the Coverage requirements of the Bond Resolution, then City may, if it desires, establish a Prepaid Passenger Airline Coverage Account. The Prepaid Passenger Airline Coverage Account may be a sub-account within a more encompassing coverage account permitted by the Bond Resolution. From funds available after all required deposits have been made to each of the other accounts set forth in the Bond Resolution, City shall determine the amount, if any, of Prepaid Passenger Airline Coverage that the Bond Resolution permits to be collected from the Signatory Passenger Airlines for such Fiscal Year. City shall deposit said amount into the Prepaid Passenger Airline Coverage Account.
- B. The balance required to be maintained for a given Fiscal Year in a Prepaid Passenger Airline Coverage Account shall equal the portion of total Coverage for such Fiscal Year allocable to the Signatory Passenger Airlines as determined under the Bond Resolution.
- C. If a Prepaid Passenger Airline Coverage Account is established, then a Prepaid Cargo Airline Coverage Account will also be established and the Signatory Cargo Airlines will be treated in a similar manner.

ARTICLE 9
MAINTENANCE AND OPERATION OF AIRPORT

Section 9.01. General

A. City shall, except for conditions beyond its control: (i) with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport with adequate, efficient, and qualified personnel and keep the Airport in good repair, including without limitation the Terminal Building Area and all appurtenances, facilities, and services now or hereafter connected therewith as the same relate to Airline's Air Transportation Business (as defined in the Federal Aviation Act of 1958, as amended); (ii) keep Airport free from obstruction and interference, including without limitation the clearing and removal of snow from the runways, aprons, taxiways and other facilities as quickly as practicable, so as to allow continued use by Airline for Scheduled Service; and (iii) develop, maintain, and operate the Airport, and its appurtenances, facilities and services in all respects in a manner at least equal to the standards or rating established by the FAA and any other governmental agency having jurisdiction thereof, except for conditions beyond the Airport to support Scheduled Service. City shall not be liable to Airline for a temporary failure to furnish all or any such services to be provided by City, whether due to mechanical breakdown or for any other causes beyond the reasonable control of City.

B. Responsibility for maintenance, cleaning, and operation of the Terminal Building and apron facilities shall be as set forth in Exhibit H.

Section 9.02. Terminal Building

A. City and Airline shall perform maintenance in the Terminal Building and surrounding areas in compliance with Exhibit H, and as further defined in this Section 9.02.

B. City shall operate, maintain, repair, and keep in good condition the Terminal Building and all additions, improvements, facilities, and equipment now or hereafter provided by City at or in connection with the Terminal Building, except any improvements, facilities, and equipment constructed or installed by Airline. City shall keep the Terminal Building, in a neat, safe, orderly, sanitary, and presentable condition, excluding Exclusive Use Space. City shall cause the tenants of Exclusive Use Space to keep their respective spaces in a neat, safe, orderly, sanitary, and presentable condition.

C. City shall at all times maintain the public areas of the Terminal Building so as to provide for reasonable unobstructed use thereof by Airline's passengers, employees, and invitees, and shall keep such areas adequately supplied, equipped (including directional signs), furnished, and decorated.

D. City shall supply or cause to be supplied appropriate and adequate equipment and maintenance for air conditioning, ventilation, heat, water, electrical, plumbing, and sewage facilities for the Terminal Building public use area, Airline's Exclusive Use Space, Joint Use Space, and Common Use Space; adequate illumination in Common Use Space and Joint Use

Space; and janitorial service in Terminal Building public use areas and Common Use Space and Joint Use Space.

E. Airline shall at all times keep its Exclusive Use Space in a neat, safe, orderly, sanitary, and presentable condition. Airline shall furnish its own janitorial service for such space and shall cause to be removed at Airline's own expense from such space all waste, garbage, and rubbish, and shall deposit the same in containers provided by City in connection with collection for removal. Should Airline refuse or neglect to maintain its Exclusive Use Space as provided, City shall have the right to perform such maintenance on behalf of and for Airline and charge Airline for same as provided in Section 9.03(B).

F. Airline shall maintain the Passenger Terminal Apron Area contiguous to its Preferentially Assigned Aircraft Parking Positions and Exclusive Use Space in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers, and remove from such areas all oil and grease spillage that is attributable to Airline's aircraft or equipment.

G. Airline shall perform at its sole expense ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and equipment including replacement of light bulbs located in its Exclusive Use Space.

H. Airline and City shall be responsible for the maintenance, repair, and upkeep of City-owned equipment as set forth below.

1. Airline shall be responsible for routine cleaning of the Passenger Loading Bridge associated with Airline's preferentially assigned holdroom. Also, any repairs or maintenance that can be reasonably attributed to an individual airline through operator error, misuse, accident or negligence will be charged directly to the responsible airline.

2. City shall be responsible for maintenance and repairs of Passenger Loading Bridges but any repairs or non-routine maintenance that can be reasonably attributed to an individual Air Transportation Company or other Airport User because of accident, operator error, intentional misconduct, misuse or negligence will be charged directly to the responsible party. Costs related to such maintenance and repair shall be accounted for as further described in Section 6.13.

3. City shall be responsible for maintenance and repairs of inbound and outbound baggage conveyor systems but any repairs or non-routine maintenance that can be reasonably attributed to an individual Air Transportation Company or other Airport User because of accident, operator error, intentional misconduct, misuse or negligence will be charged directly to the responsible party. Costs related to such maintenance and repair shall be accounted for in the Terminal Building Cost Center as further described in Section 6.03.

I. Airline shall repair at its cost or reimburse City for the cost of repairing any damage caused by the acts or omissions of Airline, its officers, employees, or agents to the Terminal Building or

any improvement to or fixture which is a part of the Terminal Building. Any repairs made by Airline to the Terminal Building shall be subject to inspection and approval by Aviation Director. Major repairs, such as those that require replacing or rebuilding any improvement, fixture, or structure, shall not proceed until Airline presents and obtains the Aviation Director's approval of plans and schedules for accomplishing the work.

J. Airline shall provide on its own behalf, or make reasonable efforts to arrange with other Air Transportation Companies to jointly provide, appropriate baggage porter sky cap services and curb-side airline baggage check-in in the public areas of the Terminal Building.

Section 9.03. City's Right to Inspect and Make Repairs

City by its authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable) to enter Airline's Exclusive Use Space, Common Use Space, and Joint Use Space for the following purposes:

A. To inspect such space to determine whether Airline has complied, and is currently in compliance with, the terms and conditions of this Agreement.

B. Upon reasonable notice to Airline, to perform such maintenance, cleaning, or repair as City reasonably deems necessary because of Airline's failure to perform its obligations under this Article 9 if such failure continues following reasonable notice from City. City may recover from Airline the reasonable cost of such maintenance, cleaning, or repair plus a fifteen percent (15%) administrative charge.

Section 9.04. Alterations and Improvements

A. Airline shall make no alterations, additions, improvements to, or installations on any of the space leased under this Agreement without the prior written approval of City. Approval shall not be unreasonably withheld, conditioned or delayed; provided, however that Airline may make non-structural alterations to the exclusive use space leased under this Agreement without the approval of City.

B. Plans, schedules, and specifications for any alterations, additions, improvements, or installations shall be filed with, and are subject to the approval of the Aviation Director and any such work shall be done in accordance with applicable building codes, local ordinances, and state law. Only plans and specifications marked "Approved" by City will be used by Airline's contractors. If after review by the Aviation Director, the said improvements, additions, alterations, or installations are deemed to be of a substantial nature, the Aviation Director may require that the actual contract agreement be a Private Construction Agreement between Airline and Airline's contractor.

C. All alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures which can be removed without damage to the leased premises shall become part of the realty and title shall vest with City upon completion.

ARTICLE 10
DAMAGE OR DESTRUCTION OF PREMISES

A. If the Leased Premises or any portions thereof, or any buildings or structures of which such space may be a part, are damaged by fire or other casualty, but not rendered untenable, the same shall be repaired with due diligence by the City at the City's expense. If the damage shall be so extensive as to render part or all of such Leased Premises unusable, but capable of being repaired in sixty (60) days after the date the casualty or fire occurred, the same shall be repaired with due diligence by the City, and the rent and other charges payable hereunder shall be paid in full to the time of such damage and shall thereafter cease as to the unusable portion of the Leased Premises until such shall be repaired.

B. If the Leased Premises or any portions thereof, or any buildings or structures of which such space may be a part, are completely destroyed by fire or other casualty or so damaged as to be incapable of repair within sixty (60) days after the date of the fire or other casualty (but before the Leased Premises are repaired and before a contract for repair or reconstruction has been signed), City shall notify Airline in writing whether (i) such space shall be repaired; or (ii) City intends to terminate this Agreement with respect to the space so damaged or destroyed. If the space is to be repaired, it will be repaired with due diligence by City. The rent allocable to any portion of the space rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs; provided, however, that City will exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City but not to exceed the rent on the space rendered untenable, until such time as the repairs are completed. Further, if the City notifies the airline of its intent to terminate this Agreement with respect to the space so damaged or destroyed, this Agreement in its entirety or the portion thereof relating to such space shall cease and terminate as of the date of the damage or destruction.

C. If the Leased Premises or any portions thereof, or any buildings or structures of which such space may be a part, are completely destroyed by fire or other casualty or so damaged as to be incapable of repair or replacement within sixty (60) days after the date of the fire or other casualty, Airline may, prior to City's undertaking, or letting a contract to undertake, the restoration, reconstruction or replacement of the space so damaged or destroyed, give City notice of Airline's intent to terminate this Agreement or the portion thereof relating to the space that is so damaged or destroyed, in which case, this Agreement or the portion thereof relating to such space shall cease and terminate as of the date of the damage or destruction.

ARTICLE 11
INSURANCE AND INDEMNIFICATION

Section 11.01. General

Airline shall purchase and maintain insurance to protect Airline and City throughout the duration of this Agreement. All insurance shall be provided by insurance companies, “admitted” and “nonadmitted” to do business in the State of Iowa, and have no less than an A.M. Best Rating of B or better or acceptable to City or have a recognized reputation satisfactory to City. All insurance policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies reasonably satisfactory to City. Certificates of Insurance shall be submitted to City prior to agreement execution or commencement of work or services.

In addition to insurance, Airline may use fiduciary equivalents of insurance such as risk pools and captives to satisfy the requirements of this Article. If such fiduciary equivalents to insurance are used, Airline shall submit written confirmation to the City, upon request, to demonstrate that Airline has conducted an internal review of, and is satisfied with, the financial strength and ability of each fiduciary equivalent of insurance to meet the obligations of the Airline under this Article 11.

Section 11.02. Insurance Requirements

A. Workers Compensation Insurance: Airline shall procure and maintain during the life of this Agreement, Worker's Compensation Insurance, including *Employer's Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease. This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, Airline is not required to carry such coverage.

B. Aircraft Liability Insurance. Airline shall procure and maintain, during the life of this Agreement, Aircraft Liability Insurance, or its airline industry equivalent, in a policy form customarily carried at the time by United States based regional and major airlines, whichever applies, with limits not less than those indicated in the following:

1. Aircraft carrying only passengers:

<u>Certified Seating Capacity</u>	<u>Limits of Liability</u>
300 or More	\$400,000,000
100 to 299	200,000,000
40 to 99	100,000,000
20 to 39	75,000,000
10 to 19	50,000,000
9 or Less	25,000,000

2. Aircraft Carrying only property, cargo or mail:

<u>Gross Landing Weight</u>	<u>Limits of Liability</u>
500,000 lbs. or More	\$150,000,000
200,000 to 499,999	100,000,000
100,000 to 199,999	75,000,000
40,000 to 99,999	50,000,000
20,000 to 39,999	15,000,000
10,000 to 19,999	10,000,000
9,999 or Less	2,000,000

3. Aircraft carrying a combination of passengers and property, cargo or mail:

Limits of liability shall be the same as for aircraft carrying only passengers.

4. Turbo-Prop & Reciprocating Prop Aircraft Used For Training And Rental:

Limits of liability shall not be less than \$1,000,000 per occurrence and in the aggregate with sub-limits of not less than \$100,000 per seat.

A list of all exclusions not considered "standard and customary" to the form of policy customarily carried at the time by United States based regional and major airlines, whichever applies, shall be attached to the Certificate. Any aggregates not being of the type nor having similar coverage as is customarily carried at the time by United States based regional or major airline carriers, whichever applies, shall also be indicated on the Certificate of Insurance.

C. Automobile Liability: Airline shall procure and maintain during the life of this Agreement, Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. If Airline does not own any vehicles, coverage is required on non-owned and hired vehicles.

D. Umbrella/Excess Insurance: The requirements above may be satisfied with a combination of primary and Umbrella/Excess insurance. The Umbrella/Excess insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy or policies.

E. Property Insurance: Airline shall procure and maintain during the life of the Agreement, Property Insurance, in a form at least as broad as the standard Insurance Services Office special cause of loss form covering all structural or other improvements installed by Airline in the premises, and all fixtures, furnishings, equipment and decoration kept, furnished or installed by Airline. City shall be responsible for providing property insurance on the structural shell of the Leased Premises.

F. Subcontractors: The indemnification and insurance provided by Airline under the provisions of this Agreement shall also extend to and apply to Affiliated Airline Companies, Subcontractors, and all others whom Airline contracts with or permits to enter the Airport for the purpose of providing services to Airline.

G. Additional Insured And Governmental Immunity: Except for Workers Compensation, the insurance policies providing the coverages specified in Section 11.02, Paragraphs B, C, and D above shall include City's Additional Insured Endorsement (or pre-printed ISO or non-ISO equivalent) and Governmental Immunities Endorsement, each of which is attached as part of Exhibit M. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an Additional Insured is not intended to, and shall not make, City a partner or joint venturer with Operator in its operations at the Airport.

H. Cancellation and Non Renewal Notice: The insurance policies providing the coverages specified in Paragraphs A through E above shall include City's Cancellation and Non-Renewal Endorsement. A copy of the required endorsement is attached as part of Exhibit M.

I. Proof of Insurance: Airline shall provide to City a Certificate(s) of Insurance evidencing all required insurance coverage as provided under this section above utilizing the latest version of the ACORD form or other such form that is acceptable to City. The Certificate(s) of Insurance shall specify under "description of Operations/ Locations/ Vehicle/Special Items" (i) the title of the Agreement, and (ii) the following statement, "*Where required, City of Des Moines Additional Insured, Governmental Immunities, and Cancellation and Non-Renewal Endorsements have been included as per attached.*" These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required. All certificates and endorsements shall be submitted to Aviation Director prior to the effective date of the Agreement and upon each renewal of insurance coverages.

Section 11.03. Indemnification (Hold Harmless) Provisions

A. With respect to third party claims and to the fullest extent permitted by law, Airline agrees to defend, pay on behalf of, indemnify, and hold harmless City, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of City from and against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from City, its elected and appointed officials, employees, volunteers or others working on behalf of City, by reason of personal injury, including bodily injury or death, and property damages, including loss of use thereof, which arises out of or is connected or associated with this Agreement or Airline's operations or use of the Airport or any environmental liability which results from Airline's actions or inactions under any applicable environmental law, regulation or statute.

It is the intention of the parties that City, its elected and appointed officials, agents, employees, volunteers or other working on behalf of City shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by Airline, its officers, employees,

subcontractors, and those it brings onto City premises, and others affiliated with Airline due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from Airline's operations or use of the Airport. Nothing in this article shall be interpreted to conflict with or abrogate the responsibilities and obligations of Airline set forth in Sections 7.04, 7.06 and 7.07 of this Agreement.

B. City of Des Moines shall give notice to Airline promptly after City has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Airline to assume the defense of any such claim or any litigation resulting therefrom. City may participate in such defense at City's expense; provided, however, that the Airline shall bear the expense of such defense of the City if representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interest (as determined in good faith by the City). The failure of City to give notice as provided herein shall not relieve the Airline of its obligations under this Agreement unless the failure to do so materially prejudices the Airline. Airline, in the defense of any such claim or litigation, shall not, except with the consent of City, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the City a release from all liability in respect to such claim or litigation.

C. Airline expressly assumes full responsibility for any and all damage caused to City premises resulting from the activities of Airline, its officers, employees, subcontractors, those it brings onto City premises, and others affiliated with Airline.

D. Airline represents that its activities pursuant to the provisions of this Agreement will be performed and supervised by adequately trained and qualified personnel, and Airline will observe, and cause its officers, employees, subcontractors, those it brings onto City premises, and others affiliated with Airline to observe all applicable safety rules.

Section 11.04. Non-Liability of City

A. City, its agents or employees, shall not in any event be liable to Airline or to any other person for any acts or omissions of Airline or its agents, servants, employees, or independent contractors, or for any condition resulting from the Airline's operations or activities, nor for the acts or omissions of any other lessee, tenant, or concessionaire, or their agents, servants, employees, or independent contractors, or for any conditions resulting from the operations or activities of any such persons.

B. City shall not be liable for Airline's failure to perform any of Airline's obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

Section 11.05. Waiver of Subrogation Provision

To the extent permitted by law, Airline hereby releases City, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of City, from and against any and all liability or responsibility to Airline or anyone claiming through or under Airline by way

of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty and for any loss due to liability or occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of Airline's occupancy or use of City premises. Airline's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of Airline to recover thereunder.

ARTICLE 12
ASSIGNMENT OR SUBLEASE

Section 12.01. Assignment and Subletting by Airline

A. Airline shall not, directly or indirectly, assign, sell, or otherwise transfer this Agreement, or any portion of the Leased Premises, without the prior written consent of City, provided that the foregoing shall not prevent the assignment of this Agreement to any corporation with which Airline may merge or consolidate, or which may succeed to the business of Airline, provided such successor corporation shall acknowledge, upon request, in a writing satisfactory in form and content to Aviation Director, that it has assumed all obligations of Airline and will fully honor all terms and conditions set forth in this Agreement.

B. Airline shall not without the prior written consent of the Aviation Director sublease the Leased Premises except to its Affiliated Airline Company. The parties hereto agree that the Aviation Director may reasonably withhold such consent if City has substantially similar space available but unleased or if City can make substantially similar space available for lease within a reasonable time. Exclusive use of Leased Premises or any part thereof by anyone other than Airline, an Affiliated Airline Company, or a contractor or a subcontractor of Airline shall be considered a sublease.

C. In the event Airline requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement. In the event such proposed sublease agreement has not yet been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with Airline's request for tentative approval by the Aviation Director. The area or space to be subleased and the rental to be charged shall be specified and all other information reasonably requested by Aviation Director pertaining to said sublease shall be promptly provided. A fully executed copy of such sublease shall be submitted to the Aviation Director for final review no later than thirty (30) days following occupancy of Leased Premises, or any portion thereof, by the sublessee.

D. In the event of a sublease where the rentals, fees, and charges for the subleased premises exceed the rentals, fees and charges payable by Airline for said premises pursuant to this Agreement, Airline shall pay to City the excess of the rentals, fees and charges received from the sublessee over that specified to be paid by Airline herein provided that Airline may charge a reasonable fee for administrative costs, not to exceed 15% of the specified sublease rental, and such 15% shall not be considered excess rentals, fees and charges. Airline shall also have the right to charge a reasonable fee to others for the use of Airline's equipment and to charge for use of utilities and other services being paid for by Airline plus a reasonable fee for administrative costs, not to exceed 15% of those costs.

E. In the event Airline agrees to ground handle any portion of the operations of another Air Transportation Company at the Airport, Airline shall provide Aviation Director written notice in advance of such proposed activities, including a description of the type and extent of services to be provided at the Airport. Notwithstanding the provisions of the foregoing sentence, Airline shall not agree to ground handle another passenger airline at the Airport without the prior written

permission of Aviation Director if such passenger airline does not have in force a Scheduled Airline Operating Agreement and Terminal Lease.

F. No sublease or temporary use agreement shall release Airline from its obligations to pay rentals, fees and charges. Notwithstanding the preceding sentence, other Air Transportation Companies, by prior arrangements with Airline, and subject to Aviation Director's prior written consent, may use the Leased Premises on a temporary basis pursuant to and in accordance with the provisions of Article 4.

Section 12.02. Bankruptcy

Section 12.01 shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee or by Airline as a debtor in possession under Section 365 of the Bankruptcy Code; provided that adequate assurance of future performance as provided by Section 365 is provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

A. Adequate assurance of the reliability of the proposed source for the rental payments due under this Agreement upon the assumption or assignment of this Agreement;

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 bond from a financially reputable surety covering any costs or damages incurred by City in the event City, following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the leased space covered by this Agreement under Article 4.

Section 12.03. Relinquishment of Space

If Airline desires to relinquish any of its Exclusive Use Space, Airline will notify City in writing of the space available, and City shall use reasonable efforts to reassign the space to another airline. No assignment, transfer, conveyance, or sublease by Airline shall relieve Airline of its responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent by City to such relief.

Section 12.04. Consent

Consent by City to any type of transfer provided for by this Article 12 shall not in any way be construed to relieve Airline from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

Section 12.05. Merger of Signatory Airlines

Notwithstanding anything to the contrary contained in this Agreement, in the event Airline merges or otherwise combines with, or becomes jointly controlled by or with, another Air Transportation

Company that is or becomes a party to a Scheduled Airline Operating Agreement and Terminal Lease with City (the "Merging Airlines"), City shall cooperate with the Merging Airlines in good faith to amend this Agreement to grant permissions and consents reasonably necessary to accomplish the consolidation of the Merging Airlines operations at the Airport, which amendments may include the following: (i) Relocation of the Merging Airlines' Leased Premises to contiguous locations; (ii) Consolidation of the Merging Airlines' Leased Premises and relinquishment of excess or duplicative space; (iii) Consolidation of the Merging Airlines' agreements with City; (iv) Construction or modification of Merging Airlines' tenant improvements at the Merging Airlines' expense; and (v) Rebranding and new signage in the combined Leased Premises; provided however that: (a) the foregoing shall not require the City to bear any expense that it would not otherwise be required to bear or to do anything that would be contrary to its own best interests; and (b) no other Airport tenant, without its consent, shall be unreasonably adversely affected in the use of its Leased Premises by any of the foregoing.

ARTICLE 13 DEFAULTS

If Airline (i) fails to pay rent or any other monetary obligation when due, and thereafter fails to pay such past due amount within thirty (30) days after Airline's receipt of written notice thereof; or (ii) fails to commence promptly to keep and perform any of its other material covenants and agreements within thirty (30) days after Airline's receipt of written notice of such failure; or (iii) fails to continue with diligence to complete any of its material covenants and agreements after performance is commenced or after the filing of any petition, proceedings, or action by, for, or against Airline under any insolvency, bankruptcy, or reorganization act of law; or (iv) voluntarily discontinues its Scheduled Service at the Airport (except by reason of strike or causes beyond control of Airline) for a period of thirty (30) consecutive days unless otherwise agreed to in writing by City and Airline; or (v) fails to provide the security or performance bond described in Section 6.09 as and when required thereunder, then Airline shall be in default hereunder, and City, in its sole discretion, may avail itself of one or more of the following remedies:

A. Without terminating this Agreement, City make take possession of the applicable space or improvement by any lawful means, and make such repairs, renovations or alterations as may be reasonably necessary, in City's sole discretion, to relet such space or improvement, or any portion thereof, and, without having any obligation to do so, relet such space or improvement, or any portion thereof, for the account of Airline, for such period (which may extend beyond the initial Term or any renewal Term), at such rental and upon such terms and conditions as City, in its sole discretion, reasonably deems advisable. City shall be entitled to recover from Airline all reasonable and documented damages actually incurred by City by reason of Airline's default, including, but not limited to: (i) the cost of recovering possession of the space or improvement(s); (ii) all expenses of reletting the space or improvement(s), including, but not limited to, any repairs, renovations or alterations to the space or improvement(s); (iii) the costs of protecting the space or improvement(s) and all personal property located therein; (iv) the unamortized portion of any Airline improvement(s) provided or paid for by City; (v) any rent abated during the term of this Agreement; (vi) the worth at the time of the award of (a) unpaid rent and any other fees and charges required to be paid under this Agreement, and (b) any and all other amounts necessary to compensate City for any detriment caused by Airline's failure to perform its obligations under this Agreement, including, but not limited to, the costs incurred by City for the taking of an inventory and removal of any and all property left in, upon or about the leased space by Airline, or any sublessee, assignee or licensee, as a result of any abandonment, vacation or surrender of the space or any improvement(s) or following City's re-entry and re-taking of possession thereof; and (vii) attorney's fees and taxable and non-taxable costs and expenses incurred by City in connection with such default and City's exercise of its rights and remedies under this Agreement, at law or in equity.

Upon reletting, all rent received by City shall be applied first, to the payment of all costs and expenses associated with reletting the space or improvement(s), second, to the payment of any indebtedness or other sums due and owing from Airline to City as a result of Airline's default, third, to the payment of all rent and other fees and charges then due and owing under the terms of this Agreement, and the residue, if any, shall be held by City and applied in payment of future rents and fees and charges as the same accrue under this Agreement. If any rent received from

such reletting during any month is less than that which would have been received pursuant to this Agreement, Airline shall immediately pay any deficiency to City. No such re-entry and re-taking of the leased space or any improvement(s) by City shall be construed as an election on its part to terminate this Agreement unless written notice of such election is given by City to Airline.

B. At any time before or after a re-entry and any reletting as provided in Article 13 herein, City may terminate Airline's rights under this Agreement as provided in Section 14.02 herein, without any restriction upon recovery by City for past due rentals and other obligations of Airline; provided, however, upon such termination, Airline shall be relieved from paying rentals from and after the date of such reletting of the Premises at a rental rate equal to or greater than the rental rate under this Agreement.

C. In addition to the rights and remedies provided for herein, City may pursue any other rights or remedies, legal or equitable, available to City under the laws and judicial decisions of the State in which the leased space or improvement(s) is/are located.

ARTICLE 14 TERMINATION

Section 14.01. Events Permitting Termination by Airline

Airline may terminate this Agreement and all of its future obligations hereunder at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving City thirty (30) days' advance written notice if: (i) Airline is prohibited by lawful authority from using the Airport for a period exceeding sixty (60) consecutive days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport or in the surrounding airspace; or (ii) City is in material breach of any of the material covenants or agreements contained in this Agreement for a period exceeding thirty (30) consecutive days after receipt of written notice of such breach from Airline. Notwithstanding the foregoing or anything in this Agreement to the contrary, in lieu of declaring an event of default by City, if City shall fail, refuse or neglect to comply with City's obligations in accordance with this Agreement, or if Airline is required to make any repairs by reason of any act, omission or negligence of City or its employees or agents, Airline shall have the right, following thirty (30) days written notice to City to make such repairs on behalf of and for the account of City who shall pay same within thirty (30) days from receipt of an invoice regarding the same. If City fails to make sure payment, and notwithstanding any provision in this Agreement to the contrary, Airline may deduct the cost and expense thereof from the next installment of rent due.

Section 14.02. Events Permitting Termination by City

City may terminate this Agreement and all of its future obligations hereunder upon written notice to Airline and may exercise all rights of entry and reentry upon the Leased Premises, with or without process of law, if any of the events constituting a default under this Agreement, as set forth in Article 13 herein shall have occurred (including the lapse of any specified grace period).

Section 14.03. Termination without Default

If Airline terminates this Agreement for a reason other than one or more of those listed in Section 14.01, Airline shall continue to pay rent as provided for in Section 6.03.

ARTICLE 15 FAA PROVISIONS

Section 15.01. Non-Discrimination

A. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement, for a purpose for which a Department of Transportation program or activity 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 other requirements imposed pursuant to 49 CFR, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

B. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (ii) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that Airline shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR, Part 21, Non-discrimination in Federally Assisted Programs or the Department of Transportation, and as said Regulations may be amended.

Section 15.02. Civil Rights

Airline shall comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Airline or its transferee for the period which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property of real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (i) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

Section 15.03. Just Services

Airline agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided that Airline may make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Section 15.04. Exclusive Rights

Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 and as said act may be amended from time to time.

Section 15.05. Subordination to Agreements

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States or the State of Iowa relative to the operation, maintenance, development, or administration of the Airport, the execution of which is or has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal or State of Iowa funds for the improvement of development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, and as said act may be amended from time to time.

Section 15.06. Access to Facilities

Airline shall be responsible for ensuring that for all terminal facilities under exclusive lease to Airline, accessible facilities and services will be provided to individuals with disabilities which meet the requirements of 49 CFR 27.71, applicable ADA rules of the Department of Transportation and Department of Justice for airport operators, applicable Air Carrier Access Act rules (49 CFR part 382) for carriers, and other applicable federal regulations when required by said statutes or regulations. City shall be responsible for ensuring that, for all other terminal facilities not under exclusive lease to Airline, accessible facilities and services will be provided to individuals with disabilities which meet the requirements of 49 CFR 27.71, applicable ADA rules of the Department of Transportation and Department of Justice for airport operators, and other applicable federal regulations when required by said statutes or regulations.

ARTICLE 16 ENVIRONMENTAL MATTERS

Section 16.01. Airline's Representations and Warranties

A. For purposes of Article 16, Airline agrees to be responsible for not only its activities on Airport property but also the activities of its Subcontractors for any activities conducted on behalf of Airline on Airport property.

B. Airline shall at all times during this Agreement comply with all applicable federal, state and local environmental laws and regulations (hereinafter "Environmental Laws"), with regard to the Leased Premises and the Airport to the extent any activities are conducted by Airline thereon. In furtherance of this provision, at a minimum, and without limitation, Airline shall:

1. At all times relevant to this Agreement and during Airline's activities under this Agreement, apply for, obtain and maintain any and all necessary permits, licenses, identification numbers and notices as required by applicable law, making timely and full payment of any fees therefore.

2. At all times relevant to this Agreement and during Airline's activities under this Agreement, maintain and implement an updated Storm Water Pollution Prevention Plan (SWPPP) compatible with the Airport's SWPPP sufficient to comply with the Iowa Department of Natural Resources National Pollutant Discharge Elimination System permit for the co-permittees along with City or, alternatively, utilize the Airport's SWPPP by submitting co-permittee specific best management practices. Airline shall sign the National Pollutant Discharge Elimination System Certification Statement attached as Exhibit N to this Agreement and submit it with the execution of this Agreement and update and re-execute the National Pollutant Discharge Elimination System Certification Statement as may be required by the Iowa Department of Natural Resources. By doing so, the Airline becomes a co-permittee, along with City, other SIC 45 code tenants, subtenants, or operators signing such certifications, to Iowa Department of Natural Resources National Pollutant Discharge Elimination System Individual Permit No. 77-27-0-08 for "Storm Water Discharge Associated with Industrial Activity from Airport or Aircraft Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas located at Des Moines International Airport." As a co-permittee, Airline agrees to ensure compliance by Airline, its employees, Subcontractors, and agents with the terms and conditions of the storm water pollution prevention plan(s) developed under the National Pollutant Discharge Elimination System permit and the terms of the National Pollutant Discharge Elimination System permit and Airline agrees in connection with its activities at the Airport and the activities of its Subcontractors to comply with the terms and conditions of the storm water pollution prevention plan(s) developed under the National Pollutant Discharge Elimination System permit and the terms of the National Pollutant Discharge Elimination System permit. Airline shall conduct weekly inspections and maintain records, in accordance with the National Pollutant Discharge Elimination System permit, for Airline and its Subcontractors. City shall conduct annual co-permittee inspections, in accordance with the National Pollutant Discharge Elimination System permit on the Airline, for the Airline's

and its Subcontractors' industrial activities regulated by the National Pollutant Discharge Elimination System permit. Airline shall fully cooperate with City on the annual co-permittee inspections.

3. Airline agrees to undertake responsibility for any of its actions or operations occurring on the Des Moines International Airport, including those occurring on but not limited to the "Aircraft Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas" defined under Paragraph 3 of the National Pollutant Discharge Elimination System permit that result in environmental contamination of any of those areas or of any areas downstream from those areas, whether on or off the Airport, but only to the extent caused or contributed to by Airline. If Airline has any subcontract agreements that must be pre-approved by City, Airline must identify which contracting entity will be responsible for each portion of the SWPPP and shall ensure compliance therewith. All such Subcontractors must also sign the National Pollutant Discharge Elimination System Certification Statement prior to conducting work on the Leased Premises or on the Airport.

C. Airline and its Subcontractors shall not cause or permit any Hazardous Substances to be generated, manufactured, refined, treated, disposed, produced or released on the Leased Premises or on the Airport except in the ordinary course of Airline's business and in compliance with applicable law, including propylene glycol and ethylene glycol when used in de-icing products for use during de-icing operations. This restriction does not preclude the use or storage of a Hazardous Substance by Airline in the ordinary course of Airline's business provided such activities are done in accordance with the appropriate federal and state laws and any Hazardous Substance that is used, disposed of or stored is done so in accordance with the applicable federal and state laws. If so requested by City, Airline shall provide City with a list of all Hazardous Substances utilized in material quantities in connection with Airline's or Airline's Subcontractor's operations. City may require Airline or Airline's Subcontractor to discontinue the use of certain Hazardous Substances to the extent that suitable replacement materials can be utilized at comparable costs. Hazardous Substance has the meaning defined under Iowa Code section 455B.381(5). This section does not relieve Airline of any liability it may have if the release of propylene glycol and ethylene glycol in de-icing products causes a violation of the National Pollutant Discharge Elimination System permit, the Federal Clean Water Act (33 U.S.C. section 1251 et seq) and its implementing regulations or Iowa Code Chapter 455B, Division III and its implementing regulations.

D. The restriction set forth in Paragraph C above does not preclude the creation, use or storage of a Hazardous Waste by Airline in the ordinary course of Airline's business provided such activities are done in accordance with the appropriate federal and state laws and any Hazardous Waste that is created, used or stored is disposed of in accordance with the applicable federal and state laws. Hazardous Waste has the meaning defined under Iowa Code section 455B.411 (3).

E. Airline and its Subcontractors shall not cause or allow any use of the Leased Premises or the Airport that will create or constitute a Public or Private Nuisance. Public or Private Nuisance is defined as anything, other than noise, that by its continued use or existence may be injurious to public health, safety, welfare or property.

Section 16.02. Allocation of Environmental Responsibility

Without waiving any rights of City or Airline either expressed or implied with respect to third parties, all environmental responsibility shall be allocated between City and Airline as follows:

A. Airline shall be responsible for any Environmental Condition of the Leased Premises used by Airline or its Subcontractors to the extent any such Environmental Condition is or has been caused or contributed to by Airline's or its Subcontractors' activities on or use of Leased Premises. Airline shall be responsible for any Environmental Condition of Airport property used by Airline or its Subcontractors to the extent any such Environmental Condition is or has been caused or contributed to by Airline's or its Subcontractors' activities on or use of Airport property. Environmental Condition means any condition that exists or has existed with respect to soil, storm waters, surface or ground waters, stream sediments, or air and every other environmental media, which condition requires investigation or response action pursuant to applicable environmental federal, state or local statutes, regulations, ordinances or permits or which could result in claims, demands, orders, penalties, fines or liabilities under applicable Environmental Laws by or to third parties, including without limitation all applicable governmental entities.

B. In the event that an Environmental Condition occurs, the party causing same shall promptly and immediately notify City, other required parties and the governmental agency having jurisdiction over such condition to the extent required by law. All parties causing or contributing to such Environmental Condition shall take immediate action to report, as required by law, investigate and cleanup and remediate such Environmental Condition. Notwithstanding the previous sentence, City reserves the right to require that Airline conduct remedial activities that place the property in the condition required for the reasonably anticipated future commercial use of the Airport property. Additionally, in the event that City discovers or otherwise becomes aware of an Environmental Condition on Airport property, City shall notify any party(ies) believed by City to be responsible for such an Environmental Condition.

C. In the event City must undertake investigation or remediation of an Environmental Condition, Airline hereby grants City, and its employees, consultants, contractors and representatives reasonable access to the Leased Premises for such purposes on the condition that Airline's use and enjoyment of the Leased Premises is not unreasonably interfered with.

D. In the event that City, after reasonable diligence, makes a final determination regarding the responsibility of one or more Signatory Passenger Airline(s) or Signatory Cargo Airline(s) as to an Environmental Condition and provides written notice of its final determination to such Signatory Passenger Airline(s) or Signatory Cargo Airline(s), such Signatory Passenger Airline(s) or Signatory Cargo Airline(s), as the case may be, shall perform all necessary actions to investigate and remediate such Environmental Condition, and shall assume responsibility and liability for all reasonable clean-up and remediation costs, penalties and fines assessed for that Environmental Condition, and shall fully reimburse City for the following reasonable costs and expenses directly related to the Environmental Condition: (i) costs incurred in City's investigation of environmental conditions prior to providing notice to any party as set forth in Section 16.02(B); (ii) costs of City's investigation and remediation where notice to and an

opportunity for Airline to perform such activities is not practicable, in City's discretion, given the presence of immediate environmental threats or other conditions at the Airport; (iii) costs of City's oversight of Airline's remediation activities; (iv) such costs incurred by City in the event that Airline refuses to perform such investigation or remediation activities, after first providing notice and opportunity for Airline to complete the work; and (v) fines, penalties and such other costs including but not limited to reasonable consulting expenses, attorney fees, litigation and expert witness costs which are incurred by, asserted against or imposed upon City by any other party, including without limitation any governmental entity. Prior to City's notification of its final determination regarding the responsibility of one or more Signatory Passenger Airline(s) or Signatory Cargo Airline(s) as to an Environmental Condition or issuance of any invoice for the above referenced sums, City will provide a written explanation of why it was determined that Airline or other Signatory Passenger Airline(s) or Signatory Cargo Airline(s) were responsible for the Environmental Condition. Airline shall then have sixty (60) days to respond to City with any additional information for City's review and consideration. City shall then make its final determination as to responsibility. Such final determination may be challenged by the Signatory Passenger Airline(s) or Signatory Cargo Airline(s) in accordance with Sections 16.02(D)(2) and 17.06 of this Agreement.

1. Airline shall remit any sums referred to in Section 16.02(D) to City in accordance with Section 6.08 of this Agreement. If Airline does not pay the sums in accordance with Section 6.08, City may in addition to all remedies provided in this Agreement, commence a suit for breach of contract.

2. However, Airline may at any time before or after full payment of all sums due, without being considered in breach of this Agreement, contest any determination of City with respect to the responsibility of Airline for an Environmental Condition and any costs related thereto; provided that Airline commences and prosecutes such contest within one year after City provides written notice of its final determination. The commencement of any action to contest any such determination of City shall not relieve Airline of the obligation to make full payment of all sums due and owing during the pendency of the contest. In the event of any contest of City's determination of responsibility for an Environmental Condition, the losing party shall pay the costs and expenses (including without limitation, reasonable legal and consulting expenses, attorney fees, litigation and expert witness costs) of the prevailing party; if the Airline is the prevailing party, the City shall reimburse Airline, within thirty days of the judgment or settlement, for all amounts Airline pre-paid to the City during the pendency of the contest. In the event City does not prevail in a contest of its determination of responsibility for an Environmental Condition, City shall pay the costs and expenses (including without limitation, reasonable legal and consulting expenses, attorney fees, litigation and expert witness costs) of the prevailing party, which costs and charges shall be assessed by City and paid by all Signatory Passenger Airlines in accordance with Sections 7.07(A)(6) and 7.07(A)(7) herein and all Signatory Cargo Airlines in accordance with Sections 7.05(A)(6) and 7.05(A)(7) of the Scheduled Cargo Airline Operating Agreement. In the event City does not prevail in a contest of its determination of responsibility for an Environmental Condition, City shall assess all Signatory Passenger Airlines and Signatory Cargo Airlines in accordance with Section 16.02(E) for such clean-up, remediation, fines and penalties and City's cost and

expenses (including without limitation, reasonable legal and consulting expenses, attorney fees, litigation and expert witnesses) that are related to that event or Environmental Condition.

E. In the event after reasonable diligence, the party(ies) responsible for the Environmental Condition cannot be determined by City, or allocated as among other responsible parties, then Airline assumes its proportional share of liability for such clean-up, remediation, fines and penalties. Airline agrees to pay its proportional share, as a part of Apron Area Fees as further detailed in Sections 6.05 and 7.09 of this Agreement, of penalties or fines that may be assessed and any clean-up and remediation costs and City's cost and expenses (including without limitation, reasonable legal and consulting expenses, attorney fees, litigation and expert witness costs), that are related to that event or Environmental Condition or violations of the Storm Water Pollution Protection Plan(s), National Pollutant Discharge Elimination System permit or the Federal Clean Water Act (33 U.S.C. section 1251 et seq) and its implementing regulations or Iowa Code Chapter 455B and its implementing regulations.

F. City shall make a good faith effort to pursue collecting penalties, fines, clean up, remediation costs and costs and expenses, (including without limitation, sums referred to in Section 16.02(D), reasonable legal and consulting expenses, attorney fees, litigation and expert witness costs) from any party(ies) determined by City to be responsible for an Environmental Condition.

Section 16.03. Indemnity for Environmental Conditions

Airline shall indemnify, defend and hold City harmless against and with respect to any and all damages, claims, losses, liabilities, fines and penalties, and reasonable expenses, including without limitation, reasonable legal and consulting expenses (including attorney fees, litigation and expert witness costs), incurred by City or which are asserted against or imposed upon City by any other party (including without limit any governmental entity) to the extent the event or Environmental Condition was caused or contributed to by Airline's or its Subcontractors' activities or use of Airport property in violation of applicable law or breach of Sections 16.01 and 16.02, except to the extent arising out of the negligence or willful misconduct of City, its employees or others working on behalf of City. Nothing in this provision shall be interpreted to conflict with or abrogate the responsibilities and obligations of Airline set forth in Section 7.09. Except for personal injury and property damage covered by section 11.03, this Section shall be the sole and exclusive indemnity provided by the Airline in this Agreement related to matters involving Environmental Laws.

Section 16.04. Survival of Provisions

A. For purposes of Sections 16.01, 16.02 and 16.03, Airline's liability under this Agreement for any Environmental Condition that results in a fine or penalty issued to City by either the federal government, the state government or the local government because of a violation of the National Pollutant Discharge Elimination System permit, the Federal Clean Water Act (33 U.S.C. section 1251 et seq) and its implementing regulations or Iowa Code Chapter 455B,

Division III and its implementing regulations will end at the expiration of the applicable statute or limitations.

B. Airline's liability shall be based on whatever applicable federal, state or local laws apply for all other Environmental Conditions not included in Section 16.04(A) that become known after the expiration or termination of this agreement.

ARTICLE 17 GENERAL PROVISIONS

Section 17.01. Rules and Regulations

- A. Airline shall observe and obey all Rules and Regulations.
- B. Copies of the Airport Board's Regulations, as adopted, will be forwarded to Airline's local manager and will be made available via the Airport's website (www.dsmairport.com) or upon demand. City agrees that all Rules and Regulations so promulgated shall not be inconsistent with any legally authorized rule or regulation of the FAA, or any other federal or state agency, which is binding in law on Airline.
- C. Airline shall not violate, nor knowingly permit its agents, contractors, or employees acting on Airline's behalf to violate any Rules and Regulations.
- D. Subject to Paragraph A above, Airline reserves its right to contest in good faith and in a timely manner any laws, ordinances, rules or regulations.
- E. Notwithstanding anything in this Agreement to contrary, no changes to Rules and Regulations promulgated by City after the date of this Agreement which may adversely affect Airline's rights or increase Airline's obligations regarding those matters addressed in this Agreement shall be enforceable against Airline.

Section 17.02. Net Agreement

This is a net agreement with reference to charges paid to City. Airline shall pay all taxes of whatever character that may be lawfully levied, assessed, or charged by any governmental entity upon the property, real and personal, occupied, used, or owned by Airline, or upon the rights of Airline to occupy and use the Leased Premises and exercise the privileges granted hereunder, or upon Airline's improvements, fixtures, equipment, or other property thereon, or upon Airline's rights or operations hereunder. Airline shall have the right at its sole cost and expense to contest the amount or validity of any tax, lien, license or other governmental charge as may have been or may be levied, assessed, or charged.

Section 17.03. Compliance with Law

- A. Airline shall not use the Leased Premises or any part thereof, or permit the same to be used by any of its employees, officers, agents, subtenants, Subcontractors, licensees or others under Airline's reasonable control for any illegal purpose and shall, at all times during the term of this Agreement, comply with all rules, regulations, ordinances, and laws of any City, County, or State government or of the U.S. Government and of any political division or subdivision or agency thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the Leased Premises and its uses.

B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:

1. Comply with and conform to all applicable statutes and ordinances, and regulations promulgated thereunder, of all federal, state and other governmental bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.
2. Subject to Article 9, make at its own expense, all repairs and alterations to its improvements, equipment, and personal property that are required to comply with or conform to any statutes and ordinances. City represents and warrants that the Exclusive Use Space, except as modified by any Airline, is currently in compliance with all such statutes and ordinances.
3. Reimburse City for Airline's proportional share of all nonstructural improvements, repairs, and alterations to its Joint Use Space, and Common Use Space, that are required to comply with or conform to any of such statutes and ordinances in accordance with the terms and conditions of this Agreement.
4. Be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of Airline hereunder.

C. Property financed by the issuance of Exempt Facility Bonds under Section 142 of Internal Revenue Code of 1986, as amended, is defined as "Financed Property". To the extent that Financed Property is leased under any provision or extension of this agreement, notwithstanding any other provision, the following special terms shall apply:

1. The lease term shall not exceed eighty percent (80%) of the reasonably expected economic life of the Financed Property as determined under Section 147(b) of the Internal Revenue Code of 1986 or successor provisions.
2. The Airline shall have no option to purchase the property.
3. The Airline irrevocably elects for itself and all its successors in interest under this agreement not to claim depreciation or investment tax credit with respect to financed property.

Section 17.04. Reservation of Rights

Any and all rights and privileges not granted to Airline by this Agreement are hereby reserved for and to City.

Section 17.05. Successors and Assigns Bound

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 17.06. Governing Law

This Agreement and all disputes arising hereunder shall be governed by the laws of the State of Iowa and any action arising out of its provisions shall be brought in the courts of Iowa.

Section 17.07. Quiet Enjoyment

Airline shall, upon payment of the rentals, fees and charges required hereunder and upon compliance with the terms, covenants, conditions and obligations on the part of Airline to be performed and complied with hereunder, peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted herein and by the Rules and Regulations.

Section 17.08. Non-Liability of Agents and Employees

No member, officer, agent, director, or employee of City or Airline shall be charged personally, or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement.

Section 17.09. Nonwaiver of Rights

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

Section 17.10. Severability

If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the Agreement shall not be affected thereby, unless to do so would be contrary to the intent of the parties as expressed herein.

Section 17.11. Headings

The headings of the several Articles and 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 hereof or the interpretation or construction thereof.

Section 17.12. Force Majeure

Neither City nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of a public enemy, acts of superior

governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not within its control. However, these provisions shall not excuse Airline from paying the rentals and fees specified in Article 6 herein.

Section 17.13. Most Favored Nations

City shall not enter into any lease, contract, or other agreement with any other Air Transportation Company containing more favorable terms, rentals, fees or charges, than this Agreement.

Section 17.14. Entire Agreement

This Agreement, together with all exhibits attached hereto, except for applicable Fuel Storage Agreements and Air Cargo Facility Agreements, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in a writing executed by duly authorized representatives of the parties hereto.

Section 17.15. Co-Partnership Disclaimer

It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Airline as an agent or representative of City for any purpose or in any manner whatsoever.

Section 17.16. Agreement Construction

Words and phrases herein shall be construed as in the singular or plural number, as masculine, feminine, or neuter gender, and as disjunctive or conjunctive, according to the context. This agreement is the product of negotiations between the parties and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement or any amendments or exhibits hereto. All amendments to this Agreement shall be in writing and duly executed by all parties.

Section 17.17. Attorney's Fees

In any action brought by either party for the enforcement of any provisions of this Agreement, the party prevailing in said action shall be entitled to recover reasonable attorney's fees from the other party.

Section 17.18. License Fees and Taxes

Airline shall take or obtain all licenses and permits as required by Federal, State, or Local law. Airline shall pay any and all lawful taxes and assessments which may become a lien upon any and all of the Leased Premises or which may be levied by the State, County, City or any other tax levying body upon any and all of the Leased Premises, or upon any taxable interest of Airline acquired in this Agreement, as well as all taxes on taxable property, real or personal,

owned by Airline in or about said Leased Premises, but deferment of payment of any tax by Airline shall not constitute a default or breach of this Agreement during the time Airline is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.

Section 17.19. Compliance with Federal Aviation Regulation (FAR) Part 139 and Transportation Security Regulations (TSR) Parts 1500, 1520, 1540 and 1542

A. Airline agrees to comply at all times with FAR Part 139, and TSR Parts 1500, 1520 1540 and 1542, City's policies, regulations and ordinances, City's Transportation Security Administration approved Airport Security Program, and any other applicable laws, rules and regulations as such currently exist and are amended from time to time. Airline further agrees that any fines levied upon City, its officers, employees, agents, and members of City's boards and commissions and employees, agents or officers of City's boards and commissions pursuant to enforcement of FAR Part 139 and TSR Parts 1500, 1520, 1540, and 1542 due to acts or omissions by Airline, Airline's agents, servants, employees, independent contractors, or patrons shall be borne by Airline. Airline further agrees to indemnify and hold harmless City, its officers, employees, agents, and members of City's boards and commissions, and employees, agents, or officers of City's boards and commissions from any and all fines so levied and from any and all claims, demands, liabilities, or expenses of every kind or nature related to such levy or defense to such levy (including, but not limited to, salary of attorneys employed by City) which City or any of its officers, employees, or other persons set out above shall or may at any time sustain or incur by reason of or in consequence of Airline's acts or omissions. Airline further agrees to indemnify and hold harmless City, its officers, employees, agents, and members of City's boards and commissions, and employees, agents, or officers of City's boards and commissions from any and all claims, demands and or lawsuits arising out of Airline's or Airline's employees' failure to comply with FAR Part 139 and TSR Parts 1500, 1520, 1540 and 1542, the Airport Security Program or any other applicable law, regulation or rule.

B. Airline agrees to reasonably control all persons and vehicles entering any airport restricted area (including aircraft movement area) through its leased space in accordance with the Des Moines International Airport Security Program and in compliance with TSR Parts 1500, 1520, 1540, and 1542 as such currently exist and are amended from time to time.

Section 17.20. Notices

A. Notices required herein may be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee 72 hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other to change the address at which its notices are to be received. Addresses appearing herein, and as amended from time to time, shall include street addresses and not Post Office Boxes. Until any such change is made, notices shall be delivered as follows:

1. City:
Aviation Director
Des Moines International Airport
5800 Fleur Drive, Suite 201
Des Moines, Iowa 50321-2854
2. Airline:
NAME: _____
TITLE: _____
COMPANY: _____
ADDRESS: _____
CITY, STATE, ZIP: _____

B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

Section 17.21. Landlord's Lien

City hereby expressly waives any landlord's lien and security interest in and to all of airline's aircraft.

Section 17.22. Consent

Unless otherwise specifically provided herein, any approval or consent required by either party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

Notary Public in the State of Iowa
My commission expires _____

XXXXXX AIR LINES, INC.

By: _____

Name: _____
(Type or Print)

Title: _____

XXXXXX AIR LINES, INC. (if necessary)

By: _____

Name: _____
(Type or Print)

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) SS:
COUNTY OF _____)

On this ____ day of _____, 2008, before me the undersigned, Notary Public in and for the State of _____, personally appeared _____ and _____, to me known, who, being by me duly sworn, did say that they are the _____, and _____, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that _____ and _____, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____, ____.