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**FORT WAYNE INTERNATIONAL AIRPORT  
AIRLINE USE AND LEASE AGREEMENT**

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**B - Cost Center Map**

**C - Airline Exclusive Use Space (Square Footage and Drawing)**

**D – Terminal Building Space Usage Drawings (First Floor and Second Floor)**

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# AIRLINE USE AND LEASE AGREEMENT

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## FORT WAYNE INTERNATIONAL AIRPORT

This Airline Use and Lease Agreement ("Agreement") is effective on January 1, 2011, between the **Fort Wayne-Allen County Airport Authority** ("Authority") and \_\_\_\_\_ ("Airline"), a corporation organized and existing under the laws of the State of \_\_\_\_\_ and registered to do business in the State of Indiana.

### WITNESSETH:

**WHEREAS**, Authority owns and operates an Airport System, including Fort Wayne International Airport ("Airport" as shown on Exhibit A) and Smith Field, located in the City of Fort Wayne, Indiana, and has the right to lease portions of the Airport and to grant operating privileges thereon;

**WHEREAS**, Airline is engaged in the business of air transportation with respect to persons, property, cargo, and/or mail; and

**WHEREAS**, the parties desire to enter into an agreement and lease for the use and/or occupancy of premises and/or facilities at the Airport as set forth below;

In consideration of the mutual covenants and agreements herein contained, Authority and Airline mutually agree, each for itself and its successors and assigns, as follows:

## ARTICLE I DEFINITIONS

### SECTION 1.01 Definitions

In addition to any other words or terms that may be defined elsewhere herein, the following words and terms used in this Agreement shall have the following meanings unless some other meaning is plainly intended:

1. **Administration** means facilities, equipment, and personnel used to provide overall management support to the Authority. The Administration Cost Center includes all related expenses.
2. **Affiliate Airline ("Affiliate(s)")** shall mean any regional Air Transportation Business that operates flights under the designator code of a Signatory Airline, and any partners, parents or subsidiaries owned in whole or in part by, or has common ownership under the same parental control as a Signatory Airline as agreed to in writing by such Signatory Airline from time to time. Signatory Airline shall give the Authority a

minimum of thirty (30) days prior written notice if there is any change in an Affiliate's status as defined herein. If an Air Transportation Business no longer meets the above definition of an Affiliate, such Air Transportation Business shall no longer be considered an Affiliate for purposes of this Agreement and shall be classified as Non-Signatory. Affiliate Airline shall comply with all terms and conditions herein of the Signatory Airline for whom they are operating. The Signatory Airline shall be responsible for the actions or inactions (including the payments of fees as specified hereunder) by its Affiliate Airline. The activities performed by an Affiliate Airline shall be included in the Signatory Airline's activities and shall be included in the calculation of the Signatory Airline's fees and charges. Affiliate Airlines shall not be entitled to a Majority-In-Interest vote as a result of its relationship with a Signatory Airline. Affiliate Airlines must enter into an operating agreement with the Airport and shall secure their own aviation insurance for liability purposes, provided that such requirements shall not affect Signatory Airline's obligations to the Airport under this Agreement. Signatory Airline shall ensure its Affiliate(s) provide certificates of insurance to the Authority naming the Authority as additional insured to the extent of contractual liability assumed by Signatory Airline under Article XII herein.

3. **Airline Landing Fees Recovery** meaning is specified in Section 4.04 herein.
4. **Air Trade Center** means all land, facilities, equipment and improvements including the apron and the taxiway in the area commonly known as the "Air Trade Center".
5. **Air Transportation Business** means the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft, in commerce, as defined in the Federal Aviation Act of 1958, as amended. This definition includes charters.
6. **Airfield** means all land, facilities, programs, equipment and improvements including runways, approach and clear zones, navigational aids, taxiways, and other facilities incidental thereto for the purpose of facilitating the movement of aircraft at the Airport. Its Cost Center includes all expenses associated with it and the supporting programs and staffing.
7. **Airpark** means all land and facilities used for non-aeronautical activities at the Airport. These include grounds or buildings used for farming, miscellaneous businesses, and the golf course.

8. **Airport System** means Fort Wayne International and Smith Field as owned or operated by the Authority, including any extensions, additions, deletions, replacements, or improvements thereto.
9. **Airport/Airline Affairs Committee ("AAAC")** means a committee composed of a representative and no more than two (2) alternates of each Signatory Airline who is authorized to consult and coordinate with the Director in matters related to the planning, promotion, development, operation and financing of the Airport System. The Signatory Airline representative shall represent the interests of its designated Affiliates.
10. **Annual Budget** means the capital and operating budget as prepared by the Director and approved by the Authority.
11. **Capital Improvement** means any improvement or asset or series of related improvements or assets acquired or constructed by the Authority with the objective of improving, maintaining or developing the Airport System. Net of federal, state or local grants-in-aid, the value of each such item shall have a cost of five hundred thousand dollars (\$500,000) or more and shall have a useful life of more than one (1) year. The net cost shall include but not be limited to expenses for analysis, planning, design, and review prior to the expenditure plus the cost to purchase or construct such improvement or asset.
12. **Cargo Area** means land, hangars, buildings and aprons occupied by air cargo operators including the Air Trade Center. Its Cost Center includes all expenses associated with it and the supporting programs and staffing. These costs apply only to cargo operators.
13. **Common Use Area** means the land, building on that land or portions of such building and such equipment that are exclusively for and/or used by airlines or their passengers. These areas and equipment include the gates, ground support equipment ("GSE"), loading bridges and regional boarding ramp, gate holding areas, TSA equipment and screening areas, and the baggage carousel area as designated on Exhibit D.
14. **Common Use Formula** calculation shall be based upon the number of enplaned passengers by an Air Transportation Business divided by the total number of enplanements at the Airport by all Air Transportation Businesses during that same accounting period. This figure is then multiplied by the total monthly Rentals for the Common Use Areas.
15. **Cost Center** means those areas of the Airport System grouped together for the purposes of accounting for O&M Expenses, eligible Debt Service, and other costs and charges; and for calculating Rentals under this Agreement. The Cost Centers named in this Agreement are mutually

exclusive and, taken together, comprise the entire Airport System. The Cost Centers of the Airport System are Airfield, General Aviation Area, Terminal Building, Terminal Apron, Parking and Roads, Cargo Area and Airpark as shown on Exhibit B, plus Marketing, Administration, Maintenance, and Reliever Airport(s) Cost Centers (not shown on Exhibit B).

16. **Cost Center Requirement** has the meaning as stated in Section 4.02, F herein.
17. **Debt Service** means, for any Fiscal Year, that portion of the principal and interest (including bond premium or discount amortization, if any), reserve, and coverage requirements due or chargeable on the debt obligations of the Authority that was not paid through federal or state grants or PFC's.
18. **Director** means the Executive Director or Acting Executive Director as from time to time may be appointed by the Authority's Board of Directors (the "Board"), and person or persons as may from time to time be authorized in writing by the Authority or by the Executive Director to act on the Authority's behalf with respect to any or all matters pertaining to this Agreement.
19. **Enplaned Passengers** means all revenue and non-revenue boarding, interline transfer, and intra-line transfer passengers at the Airport. All airlines shall provide all such passenger numbers monthly to the Authority on a form provided by the Authority. Such numbers shall include the passenger numbers from the airline's own flights, flights Ground Handled by the airline for an Affiliate airline, and for any other Air Transportation Business so handled.
20. **Exclusive Use** means the land, building on that land or portions of such Terminal Building under the sole control of a Signatory Airline. Non-Signatory Airlines and Third Party Ground Handling companies shall have no such space.
21. **FAA** means the Federal Aviation Administration of the United States Department of Transportation, or its successor agency.
22. **Fiscal Year** means the twelve (12) month period beginning on January 1st and ending on December 31st of each year, or any other twelve (12) month period adopted by the Authority as its Fiscal Year.
23. **General Aviation Area** means land, hangars, buildings, and apron areas occupied by fixed base operators ("FBO's") and private/corporate



operators. Its Cost Center includes all expenses associated with it and the supporting programs and staffing.

24. **Ground Handler, Third Party** means an entity that performs various activities for an Air Transportation Business including, but not limited, to loading and unloading cargo/baggage, handling of reservations, ticketing, aircraft cleaning, and other related functions that has entered into an agreement with such Air Transportation Business to provide such services and has been issued an operating permit by the Authority.
25. **Leased Premises** means the combined Exclusive Use and Common Use Areas as herein defined.
26. **Maintenance Cost Center** means the costs associated with facilities, equipment, supplies, repairs, and labor necessary to support and sustain the Airport System.
27. **Majority -In- Interest (MII)** means the Signatory Airlines' input regarding Capital Improvement expenditures as further explained in Article VII herein.
28. **Marketing Cost Center** means the expenses associated with promoting the Airport System.
29. **Military Use Area** means the land and buildings under the sole control of the Indiana Air National Guard as shown on Exhibit B. The Authority has no maintenance or financial responsibility for this area.
30. **Non-Signatory Airline** shall mean an Air Transportation Business at the Airport that has not executed an Airline Use and Lease Agreement or a similar agreement, but is operating under substantially the same terms and conditions as are set forth herein except there shall be no lease of Exclusive Use space. Authority shall cause all such Air Transportation Businesses to be charged one hundred twenty five percent (125 %) of all rates and charges applicable to Signatory Airlines for operating at the Airport.
31. **Operation and Maintenance Expenses ("O&M Expenses")** means, for any Fiscal Year, the costs incurred by the Authority in operating and maintaining the Airport System during such Fiscal Year, either directly or indirectly, which, under generally accepted accounting principles, are properly chargeable as expenses to the Airport System by Cost Center, including taxes payable by Authority that may be lawfully imposed upon the Airport System by entities other than the Authority.

32. **Parking and Roads** means the land, its landscaping, and the structures thereof including public and employees' automobile parking facilities, roadways, walkways and related facilities and equipment, and parking areas leased to car rental and ground transportation concessions. Its Cost Center includes all expenses associated with it and the supporting programs and staffing.
33. **Passenger Facility Charge (“PFC”)** means moneys collected by the Authority from charges imposed by the Authority pursuant to 49 USC 40117 Passenger Facility Fees, as amended or supplemented from time to time, and 14 CFR Part 158 Passenger Facility Charges (PFC’s), as amended or supplemented from time to time.
34. **Personal Property** means assets, effects, holdings and resources; property other than real property such as the equipment, trade fixtures, inventory, fixtures, furniture, or supplies owned or leased (from other than the Authority) by an Air Transportation Business and installed or used in the conduct of its activities at the Airport which are removable in the Authority’s opinion from the Leased Premises.
35. **Public Use Areas** means the non-rentable space in the Terminal Building that is not chargeable to the airlines. These areas include hallways and walkways and other areas as illustrated on Exhibit D.
36. **Reliever Airport** means Smith Field and/or any other airfield used as a general aviation airport. All costs associated with the Reliever Airport(s) are separate from the General Aviation Cost Center.
37. **Rentals** mean all applicable rents, fees, and charges of any kind.
38. **Revenue Landing** means any landing at the Airport of an aircraft except (a) an aircraft that takes off from the Airport and, without making a stop at any other airport, returns to and lands at the Airport because of meteorological conditions, mechanical or operating causes, or any similar emergency or precautionary reason; and (b) any infrequent touch-and-go or similar operation in which an aircraft comes in contact with a runway at the Airport and without coming to a stop and thereafter resumes flight by leaving the ground on the same runway and in the same direction; provided that, if the Air Transportation Business wishes to conduct a regular flight training program, the parties will negotiate a mutually agreeable separate landing fee for said program.
39. **Rules, Regulations and Ordinances** means those lawful and reasonable orders, guidelines, statutes and decrees promulgated by the Authority for the orderly use of the Airport System by all tenants and users, as the same may be amended, modified, or supplemented from time to time. These

rules, regulations and ordinances are incorporated in but are not limited to the Airport Rules and Regulations Ordinance and the Commercial Minimum Standards, attached hereto as Exhibit H and also as shown on the Authority's website

40. **Signatory Airline** means any entity conducting an Air Transportation Business at the Airport which has executed an Airport Use and Lease Agreement or has entered into an agreement with the Authority that has terms, a termination date, and other provisions substantially similar to those in this Agreement.
41. **Stabilization Factor** means the lesser of (a) an amount (which may be zero) needed to make the total landed weight units (thousand pound units) for all Airfield users equal to at least two million (2,000,000) units for the Fiscal Year being calculated or (b) an amount equal to the landed weight units of the Air Transportation Businesses for such Fiscal Year plus three hundred seventy-five thousand (375,000) units. Effective on the date that a new cargo carrier begins operations from the Air Trade Center at the Airport, the Stabilization Factor shall mean the lesser of (a) an amount (which may be zero) needed to make the total landed weight units (thousand pound units) for all Airfield users equal to at least two million (2,000,000) units for the Fiscal Year being calculated or (b) an amount equal to the landed weight units of the Air Transportation Businesses for such Fiscal Year. The application of the Stabilization Factor shall be subject to Authority's annual review and the Authority's ability to fund it.
42. **Terminal Building** means the land and the structures thereon including the Terminal(s), curb front, concourses, hold room areas, and terminal support facilities such as for power, heating, and refrigeration. Its Cost Center includes all expenses associated with it and the supporting programs and staffing.
43. **Terminal Apron Cost Center** means all expenses associated with this area (including all expenses & capital expenditures relating to loading bridges) plus the supporting programs and staffing.
44. **Usable Square Footage** means the total square footage of the Terminal Building as measured from the interior of external walls or from the centerline of each interior wall, or, in the absence of such interior wall, the point where said centerline would be located if such interior wall existed. This space includes areas available for lease to others but excludes the below defined Unusable Square Footage, as illustrated on Exhibit D.
45. **Unusable Square Footage** means the restaurant, non-public stairwells, mechanical/utility rooms, and the Authority offices.

## **ARTICLE II            TERM**

### **SECTION 2.01        Term**

The term of this Agreement shall commence upon the date specified in the first paragraph hereto and shall continue until midnight on December 31<sup>st</sup>, 2013.

### **SECTION 2.02        Options**

The Authority and the Signatory Airlines may, by mutual agreement, extend this Agreement for two (2) additional one (1) year periods. Such notice of exercising the Option(s) shall be made not later than one hundred eighty (180) days prior to the expiration or any extension of this Agreement. After the exercise of each Option, at any time during each Option, either party may, upon one hundred eighty (180) days written notice to the other, cancel this Agreement. Notwithstanding the foregoing, upon the expiration of this Agreement or any extension thereto, if an existing Signatory Airline does not exercise its Option(s), it will become classified as Non-Signatory as defined herein.

## **ARTICLE III            PREMISES**

### **SECTION 3.01        Leased Premises**

The Authority, in consideration of the compensation, covenants and agreements set forth herein to be kept and performed by the Airline, hereby leases to the Airline, upon the conditions set forth in this Agreement, the Leased Premises as described in Exhibits C and D.

Additional or substituted space, which may be leased on a permanent long term basis by the Airline during the term of this Agreement, whether or not due to expansion or renovation of the Terminal Building, shall be deemed added to the Airline's Leased Premises and identified in an amendment of Exhibits C and D. Such additional or substituted space shall be subject to all of the terms, conditions, requirements and limitations of this Agreement. The Airline shall pay to the Authority all Rentals applicable to such space under the terms of this Agreement.

Notwithstanding the foregoing, if the Airline uses additional space from time to time as outlined below in Section 3.02, such space shall not be included in the Airline's Leased Premises.

### **SECTION 3.02        Scope of Agreement**

If the Airline does not at any time use the Terminal Building nor the Terminal Apron, then the provisions of this Agreement relating solely to use and lease of space within the Terminal Building and/or Terminal Apron shall not apply to the Airline. However, if during the term of this Agreement, the Airline leases or subleases space in

the Terminal Building and/or Terminal Apron, those provisions shall then apply to the Airline.

Notwithstanding the foregoing, if the Airline and the Authority agree in a separate agreement to an occasional per hour or per day rate for the temporary or periodic use of space within the Terminal Building and/or the Terminal Apron, all applicable terms and conditions herein shall apply to Airline during such temporary or periodic use and the Rentals associated with such use shall be prorated based on the calculations as outlined in Section 4.03 and Section 4.05 herein. Such additional temporary space Rental shall be in addition to Rentals for the Leased Premises.

## **ARTICLE IV RENTALS, FEES AND CHARGES**

### **SECTION 4.01 General Commitment**

A. For the purpose of fairly allocating the cost of operating, maintaining, and developing the Airport System, various areas of the Airport System have been grouped together for the purpose of accounting for O&M Expenses, Debt Service, capital expenditures, and other costs and charges. The allocation for a Fiscal Year of O&M Expenses to each Cost Center shall be in accordance with a cost accounting system substantially similar to the system in use by the Authority at the inception of this Agreement. The Authority reserves the right to adjust the allocation of costs as a result of a change in the utilization of resources during the Term of this Agreement.

B. Airline agrees to pay Authority, without deduction or offset, all Rentals during the term of this Agreement for its use of the facilities, rights, licenses, and privileges granted hereunder.

### **SECTION 4.02 Calculation of Rentals – General Discussion**

A. Rentals may be adjusted annually during the term of this Agreement. Said adjustments to Rentals pursuant to this Article IV shall apply without the necessity of formal amendment to this Agreement. A statement showing the recalculation of the rates upon which the Rentals are based shall be prepared and transmitted to Airline by the Authority at least thirty (30) days prior to the start of the Fiscal Year. Said rates and the resultant Rentals shall be effective on the first (1<sup>st</sup>) day of the Fiscal Year to which the rates apply. An example of the calculation of the Airline Rentals is attached hereto as Exhibit F.

B. After the first five (5) months of operations in any Fiscal Year, the Authority shall review the information upon which the Rentals for that Fiscal Year were calculated. Authority may, if the variance between Rentals is greater than ten percent (10%), adjust the Rentals for the remainder of such Fiscal Year so that the projected Rentals for the full Fiscal Year would approximate the Rentals that would have occurred had the updated information been used in the initial calculation. The adjusted Rentals will be implemented at the start of the seventh (7<sup>th</sup>) month of the Fiscal Year and shall remain in

effect through the balance of the Fiscal Year. The Authority grants to Airline the ability to request a consultation regarding any Rental adjustment prior to implementation.

C. Adjustments may also be made to the Rentals, after written notice to and consultation with the Signatory Airlines, whenever the Authority believes that there will be a significant variance between the actual amounts that will occur and the estimated amounts that were used in calculating the Rentals.

D. If the calculation of Rentals herein is not adjusted in accordance with this Section, then the current Rentals will continue in effect as provided herein.

E. Following the closing of each Fiscal Year, the Authority shall determine the difference between (1) the amounts that the Airline paid during the preceding Fiscal Year in Rentals, which are calculated pursuant to this Article IV and (2) the amounts the Airline would have paid had such Rentals been calculated using the actual data for that Fiscal Year. If the amount paid by the Airline is less than the amount that the Airline should have paid based upon the actual data, the difference shall, as appropriate, be invoiced to the Airline for payment due and payable upon receipt of invoice. If the amount paid by the Airline exceeds what was due from Airline, a credit shall be issued to the Airline and applied against open invoices due from the Airline.

F. The Authority shall calculate for each Cost Center a Cost Center Requirement for the succeeding Fiscal Year by totaling the following amounts which, as appropriate, shall be the amounts set forth in the Annual Budget for such Fiscal Year:

1. O&M Expenses allocable on a prorated basis to the Cost Centers;
2. Debt Service plus "coverage", as such "coverage" is required by documents authorizing revenue bond issues, allocable to each Cost Center that benefits from such bond issue;
3. Amortization of allowable capital items allocable to each Cost Center, which the Authority will capitalize for financial statement presentation and whose local share (i.e., other than restricted aviation grants from the State of Indiana or the federal government) of funding exceeds seventy-five thousand dollars (\$75,000) and such local share was not funded with a debt instrument (the debt service of which is already included in the calculation of the Cost Center Requirement). Amortization shall commence when the asset is placed into beneficial service and shall continue through the amortization period as determined for the asset. Such amortization shall be calculated using an eight percent (8%) interest rate and a useful life which conforms to generally accepted accounting principles;
4. Amounts for capital items allocable to each Cost Center that the Authority will capitalize for financial statement presentation and whose local share of funding does not exceed seventy-five thousand dollars (\$75,000); and

5. A deduction shall be made in a Cost Center for payments, if any, to the Authority by tenants and users for direct reimbursement of O&M Expenses or other comparable fees that are included in the calculation of the Cost Center Requirements.

### **SECTION 4.03 Terminal Building Rent Calculation**

A. The Terminal Building Cost Center Requirement shall be divided by the amount of estimated Usable Square Footage for the succeeding Fiscal Year to establish a per square foot Rental rate.

B. Airline shall pay for use of its Exclusive Use space the amount derived by multiplying the per square foot Rental rate for a given Fiscal Year times the total square footage of the Airline's Exclusive Use space for such Fiscal Year as identified in Exhibit C. These Exclusive Use space Rentals shall be due and payable on the first day of the first month of each such Fiscal Year in advance in installments equal to one/twelfth (1/12<sup>th</sup>) of the total due annually. Additionally, Airline shall pay each month following the completion of activity for the month, for use of Common Use Areas (for all Terminal Building tenants of which Airline is one) the amount for such month prorated to Airline by the Common Use Formula of one/twelfth (1/12<sup>th</sup>) of the product derived by multiplying the per square foot rate for a given Fiscal Year times the total square footage of such Common Use Area.

### **SECTION 4.04 Terminal Apron Fee Calculation**

- A. The Terminal Apron Cost Center Requirement shall be divided by the estimated total landed weight (in thousand pound units) for Revenue Landings by airlines which make use of the Terminal Apron Cost Center facilities to establish the rate per landed weight unit. Airline shall pay, if it is an airlines which makes use of the Terminal Apron Cost Center facilities, the amount which is the product of the per unit rate times the landed weight (in thousand pound units) for each of the Revenue landings by Airline.
- B. The landed weights used shall be the then-current maximum allowable gross landing weight as certified by the FAA.

### **SECTION 4.05 Landing Fees Calculation**

A. The Authority shall calculate the Airline's Landing Fees Recovery for the succeeding Fiscal Year by adding (1) seventy five percent (75%) of the ratio of estimated total landed weight for Revenue Landings by Air Transportation Businesses to the estimated total landed weight (including Stabilization Factor if applicable) for Revenue Landings of all Airfield Cost Center users and (2) twenty five percent (25%) of the ratio of the estimated number of Revenue Landings by Air Transportation Businesses to the estimated total Revenue Landings by all Airfield Cost Center users.

B. The Authority shall calculate the Airline's Landing Fee Recovery amount for the succeeding Fiscal Year by multiplying the Airfield Cost Center for such Fiscal Year times the Airline's Landing Fee Recovery for such Fiscal Year.

C. The Airlines Landing Fee Recovery amount shall be divided by the estimated total landed weight [in one thousand (1,000) pound units] for the Revenue Landings by Air Transportation Businesses to establish the landing fee rate which shall be charged to Airline for each one thousand (1,000) pound unit of landed weight for each Revenue Landing during such Fiscal Year.

D. The landed weight used for an aircraft shall be the then-current maximum allowable gross landed weight as certified by the FAA.

#### **SECTION 4.06 Other Rentals**

A. Other Rentals payable by Airline, in addition to those specified elsewhere in this Agreement shall include but shall not be limited to the following:

1. Employee Parking Charges: Airline shall pay a charge to Authority annually or monthly in advance, according to policies and practices established by the Authority for locally based employees utilizing the employee parking facility at the Airport;

2. Electricity and Other Utilities: To the extent that the utility service usage is traceable and chargeable to Airline, Airline shall pay to Authority, or the utility service provider as appropriate, the charges for such usage;

3. LEO Security Payments: Airline shall pay its share, prorated monthly based on its Enplaned Passengers (including designated Affiliates and handled airlines), of the Authority's costs that are associated with the providing of security in support of passenger screening in satisfaction of federal requirements; and

4. Miscellaneous: Charges for miscellaneous items, activities, or services not specified herein (e.g., badges, extraordinary electrical usage, public address system, Authority-supplied phone system, etc.) shall be assessed by Authority and paid by Airline as reasonably determined by the Director.

#### **SECTION 4.07 No Other Rentals, Fees, or Charges**

A. Except as provided elsewhere in this Agreement or in other agreements entered into by Authority and Airline, no further Rentals, fees, licenses, service or operating taxes, tolls, or charges shall be charged against or collected by Authority from Airline, its passengers, its shippers and receivers of freight and express; or its suppliers of material, contractors, Affiliates, Third Party Ground Handlers or furnishers of services regarding the Leased Premises, facilities, rights, licenses, and privileges granted to Airline in this Agreement, provided however that Authority expressly reserves the right to assess and collect:



1. Licensing and permitting fees, charges or other costs specified in the Authority's Rules, Regulations and Ordinances or such other costs imposed on the Authority by federal or state statute or any administrative rule of a governing federal or state agency or any judicially imposed order, excluding fines, penalties, and judgments to the extent resulting from the acts or failure to act of the Authority, or its employees; and

2. A reasonable Passenger Facility Charge (PFC), enacted or in effect during the term of this Agreement or any extension or renewal thereof. The Authority shall apply the proceeds of such PFC, as permitted by law, to the maintenance, operation, or improvement of the Airport at which the charge was collected in accordance with the FAA's PFC rules and regulations. In the event Airline collects such PFC on the Authority's behalf, Airline may be reimbursed for reasonable administrative costs as permitted by law.

#### **SECTION 4.08 Payment Provisions**

A. Payment of Common Use Rentals shall be due and payable by Airline and such payment shall include payments due from Airline's designated Affiliates within thirty (30) days from the date of the Authority's invoice. Common Use Rentals not paid by the date due shall accrue interest at the rate of one and one-half percent (1½%) per month.

B. The acceptance by the Authority of any payment made by the Airline shall not preclude the Authority from verifying the accuracy of Airline's reports used to calculate and apply Rentals set forth in this Agreement; or from recovering any additional payments actually due from the Airline.

### **ARTICLE V REPORTS AND RECORDS**

#### **SECTION 5.01 Activity Report**

A. Airline shall furnish to Authority on or before the tenth (10<sup>th</sup>) day of each month an accurate report of Airline's, including its designated Affiliate's, operations at the Airport during the preceding month, setting forth all data necessary to calculate the Rentals due under this Agreement. Said report (as illustrated in Exhibit E) shall include the Airline's (including its designated Affiliate's) total number of Revenue Landings for the month by type of aircraft, the maximum allowable gross landed weight (as certified by the FAA) for each type of aircraft, and the total landed weight for the month; and the number of Enplaned revenue and non-revenue Passengers for each month. Airline shall also provide on the same schedule the number of deplaning passengers, the amount of cargo, freight, mail, and express packages for such month. Statistical information supplied by Airline shall include such similar information for flights of other airlines Ground Handled or otherwise accommodated by Airline if such airlines do not file an activity report directly with the Authority.

B. If Airline fails to furnish Authority with the report required by Section 5.01, A, Airline's Rentals shall be determined by assuming that Airline's, including its designated Affiliate's, total landed weight or Enplaned Passengers for such month were one hundred twenty-five percent (125%) of its total landed weight or Enplaned Passengers during the most recent previous month for which such data are available. Any necessary adjustment in such Rentals shall be calculated after an accurate report is delivered to Authority by Airline for the month in question, and such adjustments shall be made at the year-end reconciliation when the adjustments will be applied as credits or charges to the appropriate invoices in the next month most convenient for the Authority.

## **SECTION 5.02 Accounting Records**

A. As soon as practicable following the execution of this Agreement, Authority shall establish, and thereafter maintain, accounting records and systems that will document the information needed for each of the Cost Centers.

B. Authority shall provide to Airline its proposed Annual Budget and Authority's audited financial statements as well as any supplemental financial data reasonably required by Airline to assess the adequacy of Rentals established under this Agreement.

C. Airline shall keep and maintain a complete and adequate set of records concerning its Airport System operations including landed weights by aircraft for a period of three (3) years from the date of such activity. If such records are maintained at a location other than Airline's Leased Premises, such records shall be retrievable within ten (10) days.

D. Each party hereto, at its expense and upon reasonable notice, shall have the right from time to time to audit and inspect the records of the other party relating to their performance under this Agreement, provided such inspection is made during regular business hours.

## **ARTICLE VI ANNUAL BUDGET**

### **SECTION 6.01 Annual Budget Coordination Procedures**

A. At least thirty (30) calendar days prior to approval by Authority of its Annual Budget for the upcoming Fiscal Year, Authority shall submit to Airline the proposed Annual Budget and Authority's calculation, pursuant to this Agreement, of the Rentals for such Fiscal Year.

B. Pursuant to consultation process with the Airlines, an AAAC budget review meeting will be set up prior to Authority's budget approval. The Airline is urged to participate fully in this process so that the Authority may have the early benefit of the Airline's comments. Authority shall give due consideration to any written comments and suggestions that are received prior to adoption of the Annual Budget for the upcoming Fiscal Year.

C. Authority shall adopt an Annual Budget that may include revisions made as a result of Authority's consultation with Airline and as a result of Authority's budget process.

## **ARTICLE VII CAPITAL IMPROVEMENTS AND MAJORITY-IN-INTEREST (MII) VOTING**

### **SECTION 7.01 General**

A. It is contemplated by the parties that from time to time during the term of this Agreement the Authority may undertake Capital Improvements to the Airport System. Capital Improvements that add debt service, amortization expense, additional operations and maintenance costs or have operational impact to the Airline and where the amounts expended on those Capital Improvements are included in the calculation of Rentals to be charged to the Airline as provided in Article IV shall first require Airline consultation and are subject to Majority-In-Interest (MII) approval.

B. Pursuant to 49 C.F.R. Part 1542 Airport Security and 14 C.F.R. Part 139, Certification and Operations: Land Airports Serving certain Air Carriers, the following Capital Improvements are exempt from MII voting: security, safety, emergency, judgments and settlements, laws and regulations, compliance with trust indenture, and noise mitigation and environmental remediation.

C. The Airline's views on Capital Improvements are to be received and considered as an integral part of the continuing consultative process through which the Authority plans its Capital Improvements. The Airline is urged to participate fully in this consultative process so that the Authority may have the early benefit of the Airline's views.

D. The Authority shall have the right at any time (subject to the requirements of Section 7.02) to proceed with Capital Improvements and to include amounts expended on those Capital Improvements in the calculation of Rentals charged to the Airline as provided in Article IV. The Authority will use its best efforts to maximize receipt and usage of federal, state and local development grants-in-aid.

E. The Authority may at any time delay an approved Capital Improvement.

F. The procedure outlined in this Section is intended to allow timely review and input by the Signatory Airlines regarding applicable Capital Improvement projects.

**SECTION 7.02      Consultative Review and Approval Process for  
Capital Improvements**

A.      The calculation for a MII approval or disapproval to be valid is as follows:

1.      For Capital Improvement in the Terminal Building, or the cost of which will affect Signatory Airline Rentals; at least fifty-one percent (51%) of the terminal Rentals paid to the Authority by all Signatory Airlines during the most recent six (6) month period; or

2.      For Capital Improvements in the Airfield, or the cost of which will affect the Signatory Airlines' landing fees or other airfield-related fees or charges: at least fifty-one percent (51%) of the landing fees, apron charges and other airfield-related fees and charges paid to the Authority by the Signatory Airlines during the most recent six (6) month period.

B.      Within forty-five (45) days of the finalization of the Authority's budget for the next calendar year, or more often at the Authority's discretion during the course of this Agreement, the Authority shall transmit to the Signatory Airlines a listing of its planned Capital Improvements that are to be included in the calculation of Rentals for the upcoming year. This list shall include:

1.      A description of the proposed Capital Improvements;
2.      Documentation of the need for and benefits of the proposed Capital Improvements. The Authority will also submit the same documentation for previously disapproved Capital Improvements; however, such information is provided for information purposes only and such previously disapproved Capital Improvements are not subject to the MII approval process;
3.      Estimated costs for these Capital Improvements;
4.      The proposed method of financing the Capital Improvement, including any anticipated or received federal and state airport financial assistance;
5.      The amount proposed to be included in the calculation of Rentals to be paid by the Signatory Airlines; and
6.      The estimated allocation of cost, debt service and amortization/depreciation to the various Cost Centers.

C.      After receipt of the report required by Section 7.02, B, the Authority and the AAAC shall take the following procedural steps for Capital Improvements:

1. AAAC Voting Action: Within forty-five (45) days of receipt of this report, the AAAC shall vote whether to approve, disapprove or pass without comment the Capital Improvement(s) of which it was notified. Each Capital Improvement of which the AAAC is notified shall be deemed approved unless written disapproval by a Voting Majority of the Signatory Airlines, as determined under Section 7.02, A, is received by the Director within forty-five (45) days of the Authority's mailing its notice to the AAAC. The AAAC and the Director may meet at any time, notwithstanding these procedures, to discuss Capital Improvements. The AAAC may at any time rescind any earlier written disapproval and approve in writing any Capital Improvement.

2. The Authority may proceed with any disapproved Capital Improvement at any time during the first year following AAAC disapproval, provided, however, that subject to subparagraph 4 below, the cost of said Capital Improvement shall not at any time be imposed on the Signatory Airlines as part of the calculation of Rentals to be paid by them. However, if any Airline shall occupy and/or use the Capital Improvement, it shall pay such Rentals as shall be set by the Authority. Moreover, this provision shall not prevent any Signatory Airline from agreeing to inclusion of the disapproved Capital Improvement in calculation of its Rentals.

3. After the first Fiscal Year budget submittal, should the Authority continue to desire to proceed with the Capital Improvement previously disapproved by the AAAC, Authority may include such Capital Improvement in its second or third Fiscal Year budget submittal and may proceed with the Capital Improvement without AAAC approval, and may include its costs in the calculation of the Signatory Airlines' Rentals. The AAAC and its members shall retain the rights of appearance and participation described in Section 7.02, D.

4. Notwithstanding any provision herein, the Authority may proceed with any Capital Improvement without AAAC approval, and without deferral to a Fiscal Year budgetary submittal, and include its costs in the calculation of the Signatory Airlines' Rentals if deemed necessary by the Authority in order to:

- a. Replace or repair existing facilities due to fire, natural disaster, acts of God, or other accidental destruction, provided that the AAAC is notified, and that costs are offset to the extent covered by insurance proceeds;
- b. Ensure compliance with a rule, regulation, or order of any federal, state or other governmental body (except the Authority itself);
- c. Permit the continued operation and maintenance of the Airport when its operation is affected by unanticipated or unusual circumstances of an emergency nature; or
- d. Satisfy judgments against the Authority rendered by a court of competent jurisdiction. Where an adverse judgment will affect the

Airlines serving the Airport, and where the Airlines have obtained counsel's opinion that there are reasonable non-frivolous grounds for an appeal, a Voting Majority of the AAAC may request the Authority to pursue such an appeal.

D. Irrespective of any action by a Voting Majority of the AAAC, within forty-five (45) days of mailing of the report required in Section 7.02. B above, the AAAC or its members shall have the opportunity to meet with the Authority to review the Capital Improvements proposed by the Authority. The Authority shall give due consideration to views and suggestions presented by the Signatory Airlines in developing its Capital Improvement program.

## **ARTICLE VIII USE OF AIRPORT**

### **SECTION 8.01 Airfield and Apron**

A. Subject to the Authority's Rules, Regulations, and Ordinances, FAA rules and regulations, insurance requirements as specified in Article XII herein, and other applicable local, state and federal laws and ordinances, Airline shall have the right to conduct an Air Transportation Business at the Airport, to act as a common, contract or private carrier, and to perform all operations and functions as are incidental, necessary or proper thereto in areas so designated by the Authority, including the following:

1. The right to land, taxi, takeoff, fly, park, and move aircraft operated by Airline on the Airfield as long as such aircraft which, according to applicable FAA publications, do not exceed the design strength of the paving of the runways and taxiways;
2. The right to use the Terminal Apron or Cargo apron to load and unload persons, property, cargo and mail upon or from aircraft operated by Airline via reasonably necessary or convenient means;
3. The right to service Airline's own aircraft, aircraft operated by designated Affiliate Airlines, aircraft being handled by Airline under an approved Ground Handling agreement, and other equipment operated by Airline with gasoline, oil, greases, lubricants and other fuel or propellant, and with foods and beverages and other supplies and materials, via reasonably necessary or convenient means;
4. The right by Airline or an authorized Ground Handler on behalf of Airline to repair, condition, maintain, test and park aircraft and other equipment operated by Airline on the Terminal Apron or Cargo apron to the extent such area is available for such activities, and provided that such repair, conditioning, maintenance, testing and parking shall be limited to those activities at the time commonly considered "turn ramp servicing" (which includes the activities referred to in Section 8.01, A, 3 above);

5. The right to sell, dispose of or exchange its aircraft, engines, accessories, other equipment or supplies, and any other Personal Property used by or acquired by Airline in connection with its conduct of an Air Transportation Business; provided, however, that Airline shall not sell, dispose of or exchange any such items so as to conduct any business other than an Air Transportation Business at the Airport;

6. The right to purchase or otherwise obtain and use services and Personal Property of any nature (including aircraft, engines, accessories, gasoline, oil, greases, lubricants, other fuel or propellant, foods, beverages, other equipment and supplies) reasonably necessary or convenient for its operation from any supplier meeting all federal, state and local regulations and ordinances. Notwithstanding the foregoing, if goods and services are provided by concessionaires that are located in the Terminal Building, such concessionaires shall be given the right of first refusal to supply any such goods and services to the Airline prior to Airline contracting with a non-Airport vendor. If Airline uses non-Airport vendors for goods and services to passengers, Airline shall reimburse the Authority with its next monthly payment, the equivalent of the concession fee in effect at that time that the Authority would have realized if the Airline had purchased the goods and services from the Airport concessionaires;

7. The right to conduct training flights and other non-scheduled flight activities into and out of the Airport after entering into a separate agreement with the Authority (as outlined in Article I, Revenue Landing). If requested by Authority, Airline shall restrict all such activities to certain hours so as to not interfere with scheduled flight activities of other aircraft operators using the Airport and to mitigate noise or other impacts;

8. The right to operate and maintain communications equipment as may be reasonably necessary or convenient for its operation provided such equipment does not impact the Authority's or other users of similar equipment; and

9. The right to conduct any operations or activities other than those enumerated above, all at no additional charge to the Airline by the Authority, that are reasonably related to the landing, taking-off, flying, moving, loading, unloading or ramp servicing of aircraft or the movement of passengers, cargo and/or property or mail which are reasonably necessary or convenient to the conduct by Airline of an Air Transportation Business; provided, however, that all such other operations and activities (such as touch and go operations) shall be subject to the prior written approval of the Director and such approval shall not be unreasonably withheld.

B. The foregoing shall not be construed to authorize Airline to conduct any business other than that of an Air Transportation Business at the Airport.

C. The rights enumerated above may be exercised by Airline, alone or in conjunction with any Affiliate, directly or through another person designated by Airline and such other Affiliate jointly.

## **SECTION 8.02      Public Premises**

The officers, employees, agents, guests, invitees, contractors, passengers, and prospective passengers of Airline and other persons doing business with it shall have the right to use any space, facilities, and conveniences provided by Authority at the Airport designated for use by aircraft passengers and other persons (including waiting rooms, lobbies, hallways, corridors, restaurants, observation galleries, toilets, streets, highways, and vehicular parking areas), in common with others authorized by Authority to do so, and only at the times, to the extent, and in the manner and for the purposes for which they are made available for such use, and only upon compliance with the terms and conditions upon which they are made available for such use; and only in conformity with the Rules, Regulations and Ordinances prescribed by the Authority and federal, state, and local governmental bodies with respect to the use thereof.

Airline shall not install, maintain or operate, or permit the installation, maintenance or operation in any public area of the Airport any amusement or vending machines, public pay phones or other machines operated by coins, tokens or credit cards that are not directly associated with Airline's Air Transportation Business.

## **SECTION 8.03      Exclusive Use Premises**

A. Airline shall have the right to use its Exclusive Use premises for any and all purposes reasonably necessary, convenient or incidental to the conduct by Airline of an Air Transportation Business, including the following purposes:

1. The installation, maintenance, and operation of equipment and trade fixtures including radio and other communications equipment, information and data processing equipment, office furnishing and equipment, lockers, storage and other aviation operations related facilities and equipment;
2. The loading and unloading cargo, the handling of reservations, ticketing, administrative functions, billing and manifesting of passengers and cargo, and the handling of baggage, cargo, property and mail, by Airline;
3. To the extent consistent with other contracts to which the Authority is a party, food and beverage dispensing machines may be installed in those areas of the Airline's Exclusive Use premises not accessible to the public, for the sole use and convenience of Airline employees and Airline contractors;
4. Airline self-ticketing machines may be installed only in the Exclusive Use premises and/or the subleased Exclusive Use premises of the Airline as shown in Exhibits C and D. In the event the Airline desires to install a self-ticketing machine(s) in the Public Use Areas, such space allocation shall include an appropriate amount of queuing space, all of which shall be deducted from the Public Use Areas and such space shall be included in the Airline Exclusive Use premises Rentals. Airline must receive prior written approval from the Authority allowing for the self-ticketing machine(s) and their



placement location. Airline shall repair and restore the space to its original condition, normal wear and tear accepted, following the removal of any such installation;

5. The training and supervision of personnel in the employ of or under the direction of Airline; and

6. The carrying on of activities reasonably necessary or convenient to accomplish any or all of the foregoing.

B. Nothing in this Agreement shall be construed to permit the use of Airline's Exclusive Use premises for the sale of air travel insurance as a separate business, or for public restaurants or merchandising operations or for the conduct of any business other than Airline's Air Transportation Business. However, the Airline may sell its "branded" items to the extent such sale is incidental to the Airline's Air Transportation Business.

C. Airline shall not knowingly do or authorize to be done anything which may interfere with the effectiveness or accessibility of the drainage and sewage system, water system, communications system, fire protection system, or any other part of the utility, electrical or other systems installed or located from time to time at the Airport regardless as to its location, including such systems that may be located within the Airline's Exclusive Use premises.

D. Airline shall not erect, maintain or display on the Leased Premises in the public view any billboards, banners, advertising, promotion signs or materials without the prior written approval of the Authority and in compliance with the Authority's signage policy as may be amended from time to time. Airline shall keep its ticket counter free of all printed material except required regulatory signs, conditions of travel, schedule, and Airline promotional brochure racks. Airline authorizes Authority to remove at any time and without notice any unauthorized material or displays which are placed in, on or about the Leased Premises.

E. Airline is responsible for maintaining electric loads within the designed capacity of the electrical system to the extent circuits are identifiable within specific Airline areas. Any electrical requirement in excess of design loads that require additional service to be installed, such installation shall be at the sole expense of Airline and the service shall be separately metered and paid for by the Airline.

F. Airline agrees no antenna installation will occur without prior written approval of the Director. Airline shall submit written plans to the Authority outlining the installation details showing how the installation shall not cause harm to any structure.

G. It is recognized by the Airline and the Authority that during the term of this Agreement it may be necessary for the Authority to reassign the Airline to a different reasonably comparable Exclusive Use premises, whether to comply with a rule, regulation or order of a federal or state governmental body having jurisdiction over the Authority, to implement a capital improvement project at the Airport; or to allow for the

accommodation of new Air Transportation Business entrants or the relocation of incumbent Air Transportation Businesses. In making such reassignments, the Authority shall act reasonably. As far as practicable without incurring additional expense, the Authority shall plan its construction program and capital improvements to minimize such reassignments. The Authority shall give the Airline advance notice of upcoming reassignment as soon as the Authority's plans are reasonably firm, and shall use its best efforts to provide at least ninety (90) days advance written notice of any such reassignment.

If the Airline is reassigned to comply with governmental requirements or to implement a capital improvement project, the Authority shall provide Airline space reasonably comparable in size and quality to that vacated, including moving or replacing Airline improvements and finishes, and the cost of finishing that space to a level comparable to that vacated will be included in the Authority's project costs; and the Authority shall reimburse the Airline for reasonable costs incurred in relocating its operations. Rentals for the new space shall be calculated according to Article IV herein effective upon the date of substantial completion of the capital improvement work (excepting final punch list items) in the reassigned Exclusive Use premises. Any upgrade of Airline's interior finishes, or finishing of space greater in size than that vacated, shall be at the Airline's expense. If the Airline is reassigned to allow for accommodation of a new Air Transportation Business entrant or movement of an incumbent Air Transportation Business, the moving or replacing of Airline improvements and finishes shall be at the expense of the requesting Air Transportation Business. Rentals as a result of such relocation shall be as outlined immediately above.

#### **SECTION 8.04 Employee Parking**

Airline shall have the right to the use in common with other Airport tenants reasonably adequate vehicle parking facilities for its employees, contractors or agents employed or based at the Airport. Such facilities shall be located in areas designated at the sole discretion of the Authority which may be changed from time to time. Authority reserves the right to charge Airline or its employees, contractors, or agents reasonable nondiscriminatory fees which may be changed from time to time for such facilities and to regulate such use.

#### **SECTION 8.05 Airport Access**

A. Authority hereby grants to Airline, its officers, employees, agents, guests, invitees, passengers and prospective passengers, suppliers, and authorized contractors, the right of ingress to and egress from the Airport generally and the Airline's Exclusive Use premises specifically, subject to the provisions hereof, the Rules, Regulations and Ordinances, all local, state, and federal laws and regulations, and such restrictions as Airline may impose with respect to its own Exclusive Use premises. Airline agrees to control all of its vehicular traffic at the Airport, take all precautions reasonably necessary to promote the safety of the passengers, customers, business visitors and other persons; and Airline shall employ such means as may be necessary to direct the movements of its vehicular traffic.

B. The ingress and egress provided above shall be used only by persons engaging in activities or performing acts or furnishing services for Airline that Airline is authorized to engage in or perform under this Agreement. Persons seeking access to the Airport to provide unauthorized services or perform unauthorized acts may be denied such access at the sole discretion of the Authority.

## **SECTION 8.06 Restrictions, Subordination and Federal Obligations**

A. The foregoing rights and privileges of Airline are subject to the following specific restrictions:

1. Airline shall comply with and shall require its officers, employees, agents, authorized contractors and any other persons over whom it has control to comply with such Rules, Regulations and Ordinances (Exhibit H) governing the use of Airport System facilities pursuant to this Agreement as may from time to time be adopted and promulgated by the Authority including, but not limited to, health, safety, sanitation, and with such amendments, revisions, or extensions thereof. Airline shall be notified in writing of changes to Rules, Regulations and Ordinances adopted after commencement of this Agreement.

2. Airline shall handle, use, store and dispose of fuel, de-icing fluid, and all other materials, including but not limited to regulated materials owned or used by Airline on or about the Airport in accordance with the Rules, Regulations and Ordinances as well as all applicable federal, state, local statutes, regulations, rules and ordinances. Should Airline cause such materials to be spilled or to escape from any source or in any way contaminate the Airport or property adjacent to the Airport, the Airline shall notify the Authority immediately and commence at the Airline's sole expense clean up, containment or otherwise abate such contamination as required by all applicable federal, state, local and Authority Rules, Regulations and Ordinances. Should the Airline fail to do so following proper written or verbal notification under the circumstances, the Authority may take any reasonable and appropriate action in the Airline's stead. The costs of such action by the Authority shall be recoverable from the Airline under the indemnification provisions of Section 12.02;

3. Airline shall use commercially reasonable efforts to comply with the then current informal noise abatement programs established by the Authority and to comply with any formal noise abatement program or policy established by the Authority in conformance with federal statutes, laws, rules and regulations. The Airline shall notify the Authority promptly and may challenge such programs if the Airline believes such formal or informal noise abatement programs may interfere with safe aircraft operation or if Airline believes such programs are not in conformance with federal statutes, laws, rules and regulations;

4. There is hereby reserved to the Authority, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises herein conveyed,

together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace, or landing at, taking off from, or operating on or about the Airport System;

5. This Agreement shall become subordinate to provisions of any existing or future agreement between the Authority and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport System, including any right to re-enter and retake granted property; the execution of which has been or may be required as a condition precedent to the grant of lands or property or the expenditure of federal funds for the development of the Airport System;

6. This Agreement shall become subordinate to provisions of any existing or future agreement, resolution, or trust indenture entered into by the Authority in connection with the issuance of bonds. Prior to entering into any future agreement or trust indenture in connection with the issuance of bonds that would significantly affect the Rentals under this Agreement, the Authority will consult with the Signatory Airlines as provided for in Section 4.02, C; and

7. If a material provision of this Agreement shall be held invalid by any court, or any agency of the federal government, with jurisdiction over the Airport, or if a material provision herein shall conflict with any agreement or trust indenture entered into by the Authority in connection with the issuance of bonds, Airline and the Authority agree to amend this Agreement to the extent found possible so that neither party shall (a) be deprived of a right or privilege intended to be granted or received under this Agreement, or (b) suffer an economic penalty as a result of the provision being held invalid or conflicting.

## **SECTION 8.07 Noninterference**

Airline agrees that it will not make use of its Leased Premises or perform operations in or about the Airport that in any manner might unreasonably interfere with other Airport tenants or the landing or taking off of aircraft at the Airport or otherwise constitute a hazard as reasonably determined by the Authority. If this covenant is breached, then after reasonable notice to the Airline, the Authority may enter the Leased Premises and abate the hazard at Airline's expense.

## **ARTICLE IX OBLIGATIONS OF AIRLINE**

### **SECTION 9.01 Cleaning, Maintenance, Repairs and Replacements**

A. Airline shall be responsible at all times for and shall perform or cause to be performed at minimum the following and as further outlined on Exhibit G:

1. Keep all its Personal Property, its Exclusive Use premises, and the Terminal Apron or Cargo apron (as applicable) in a clean and orderly condition and

appearance including but not limited to carpet cleaning, trash removal, etc. Such shall be done either directly by Airline or through an independent contractor (that has obtained appropriate Authority permits if applicable) in a manner acceptable to Authority; and

2. Maintain the Exclusive Use premises in good condition (reasonable wear and tear accepted) including but not limited to the overhead doors, baggage delivery system, flooring, walls, interior painting, etc. All such maintenance, repairs or replacements by Airline shall be of a quality and class not inferior to the original material and workmanship.

B. If the performance of any of the foregoing cleaning, maintenance, repair, or replacement obligations of Airline require work to be performed where safety of Airport operations or personnel might be involved, Airline shall post guards or erect barriers or other safeguards, approved by the Director, at such locations.

C. Airline shall provide and maintain at its sole expense hand fire extinguishers for the interior of all Exclusive Use areas and for the apron areas used by Airline, all in accordance with applicable safety codes.

D. Airline shall repair, at its cost, or reimburse Authority for the cost of repairing, replacing, or rebuilding any damage to the Terminal Building caused by the acts or omissions of Airline, its officers, employees, agents or invitees plus a fifteen percent (15%) administrative fee. Any repairs made by Airline shall be subject to inspection and approval by Authority.

E. Airline shall inspect its Leased Premises on a regular basis and shall promptly inform Authority of any damage to those areas which Authority is obligated under the terms of this Agreement to repair, as well as of any needed maintenance which Authority is obligated to perform.

F. Authority shall have the right to perform maintenance and make repairs and replacements where the Airline is obligated to do so and Airline has failed after reasonable written notice to perform. In which event the Airline shall reimburse the Authority promptly upon demand all costs incurred by Authority as specified in Section 9.01, D above.

## **SECTION 9.02 Modifications to Exclusive Use Premises**

A. Airline shall not make or authorize to be made any alterations to Authority property or to the Airline's Exclusive Use premises unless (a) prior written approval has been given by the Director in advance of the alteration; (b) all required building permits have been obtained; and (c) plans of alterations have been approved by the Authority and meet all existing Authority, local and national building and electric codes. Airline shall be required to provide to the Authority "as built" drawings and electronic CAD files following the completion of any alterations or modifications made in or to its Exclusive Use premises.

B. If requested by the Authority, Airline shall require its contractors to furnish a performance bond and payment bond, approved as to form and substance by the Director. The Authority's approval of the construction application and plans and specifications shall not be unreasonably withheld.

C. Airline shall indemnify, hold harmless and defend Authority, its Board, officers, directors, agents, contractors, and employees against losses (except to the extent such losses are caused by Authority's negligence or willful misconduct), occasioned by death, injury to persons or damage to property, arising out of, or in connection with, the performance of construction work by or on behalf of Airline, against the risk of loss or damage to such construction prior to the completion thereof, and against losses resulting from claims and demands by third persons arising out of the performance of such construction work. Airline shall include in all construction contracts a provision requiring the contractor to indemnify the Authority as outlined above and Airline shall provide, or shall require its contractor to provide, liability insurance covering the foregoing. Airline shall also include in any construction contract such provisions as may reasonably be required by the Director relating to the operation of the contractors at the Airport.

D. All work performed by Airline or its contractors, including all workmanship and materials, shall be of acceptable quality as determined solely, but reasonably, by the Authority. Materials shall be of at least equal or better quality than the existing. Work shall be performed in accordance with the plans and specifications approved in advance by the Authority. All construction shall be at the sole risk of Airline and subject to inspection by the Authority at any time.

F. Upon completion of or installation of any permanent addition or leasehold improvement, excluding Personal Property as defined in Article I, on, in or about the Leased Premises, such permanent addition or leasehold improvement shall immediately become the property of Authority, as owner, subject only to the right of Airline to use same during the term of this Agreement and shall remain the property of Authority thereafter with the sole right, title and interest thereto unless otherwise specified at the time of the Authority's approval of the improvement. Notwithstanding the foregoing, all such additions or improvements shall be maintained and replaced if necessary by Airline throughout the term of the Agreement at Airline's expense.

### **SECTION 9.03 Liens**

Airline shall discharge when due all obligations to contractors, subcontractors, material men, workmen and others for all work performed and for materials furnished for or on account of Airline in, on or about the Airport. Airline shall cause to be removed promptly any and all liens of any nature arising out of or because of any construction performed by or for Airline; Airline shall reserve the right to contest in court the validity of any such liens. Airline shall have the right to post an appropriate bond to cover its obligations pursuant to this paragraph.

In the event any person or corporation shall attempt to assert a mechanic's lien against the Leased Premises for improvements made by or for Airline, Airline shall hold Authority harmless from such claim, including the cost of defense.

#### **SECTION 9.04 Payment of Taxes**

Airline shall pay all lawful taxes, assessments, or charges which during the term of this Agreement may become a lien or be levied upon any interest in Airline's Leased Premises or any possessory right which Airline might have in or to said premises or any improvements thereof, by reason of its use or occupation thereof other than any taxes, assessments, or charges based on the gross or net income of the Authority, reserving to Airline, however, the right to contest, by administrative proceeding, court or otherwise the validity or applicability of any such tax, assessment, or charge. Authority shall provide such information as requested by Airline as may be required by such proceeding. Such payment shall not be considered revenue.

#### **SECTION 9.05 License Fees and Permits**

A. Airline shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under federal, state or local laws, and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

B. The Authority shall have the right to establish a licensing or permit procedure for vehicles and/or vehicle operators requiring access to Airport movement and non-movement areas and to levy directly against the Airline or its suppliers a reasonable regulatory or administrative charge to recover the cost of issuance of such Airport access license or permit.

C. The Authority reserves the right to establish a licensing or permit procedure for Ground Handlers, and others that provide services to Air Transportation Businesses on or about the Airport.

#### **SECTION 9.06 Use of Authority's Equipment**

Airline agrees that its use of the Authority's equipment, including but not limited to the Ground Support Equipment (GSE) such as loading bridges and the regional boarding ramp plus the public address system (the "Equipment"), will be in accordance with the Authority's policies and procedures. Airline agrees to ensure its staff is trained yearly on all such Equipment and shall provide documentation of such training upon request by the Authority. Airline shall not install, cause to be installed, or use any other such Equipment at the Terminal Building without the prior approval of the Authority.

## **SECTION 9.07 Employees, Contractors and Sub-contractors of Airline**

Airline shall require all of its employees, subcontractors, or contractors hired by Airline working in view of the public in and about the Terminal Building to wear appropriate, clean and neat attire and appropriate identification and at all times shall wear the appropriate identification badge in clear view. Airline shall be fully responsible for its employees', subcontractors', or contractors' compliance with FAA, TSA and Authority safety and security rules and regulations.

## **SECTION 9.08 Removal of Disabled Aircraft**

Airline shall, subject to federal law, regulations and policy, promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and gate positions) and place any such disabled aircraft in such storage areas as may be designated by Authority. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by Authority. If Airline fails to remove any of its disabled aircraft promptly, Authority may, but shall not be obligated to, cause the removal of such disabled aircraft, provided, however, the obligation to remove or store such disabled aircraft shall not be inconsistent with federal laws and regulations and Airline agrees to reimburse Authority for all costs of such removal. Airline further hereby releases Authority from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by Authority. Airline shall not position or park any disabled aircraft at a Common Use gate so as to preclude use of that gate by any other airline.

## **SECTION 9.09 Agreement Security**

A. "Agreement Security" shall be defined as a contract bond, irrevocable letter of credit or other security acceptable to the Authority in an amount equal to three (3) months' estimated Rentals payable by the Airline under this Agreement. This Agreement Security is to guarantee the faithful performance by the Airline of its obligations and to guarantee the payment of all Rentals due hereunder. Such Agreement Security shall be with a company licensed to do business in the State of Indiana and such company shall be acceptable to the Authority within its reasonable discretion.

B. If the Airline, and its designated Affiliates, has provided regularly scheduled passenger, all-cargo or combination flights to and from the Airport for the twelve (12) months prior to the Airline's execution of this Agreement (or prior to the assignment of this Agreement to the Airline) and during such time, the Airline did not commit an act or omission that would have been a cause for termination under Section 13.01 of this Agreement (an "Event of Default") had this Agreement been in effect during that period, the Airline will not be required to provide Agreement Security as outlined above.



C. If the Airline has not provided regularly scheduled flights as outlined in Section 9.09, B above prior to its execution of this Agreement, Airline shall provide the Authority upon the execution or assignment of this Agreement, the Agreement Security as specified in Section 9.09, A. The Airline shall maintain such Agreement Security in effect until the expiration of twelve (12) consecutive months during which the Airline provides regularly scheduled passenger, all-cargo or combination flights to and from the Airport (including any period prior to the Airline's execution of this Agreement), and during which time the Airline does not commit an act or omission that would be cause for termination under Section 13.01 of this Agreement or the expiration of this Agreement.

D. If any such Agreement Security should be cancelled or expires for any reason, the Airline shall provide a renewal or replacement Agreement Security at least ten (10) days prior to the date on which such previous Agreement Security is to be cancelled or expires.

E. Notwithstanding the foregoing, if the Airline commits an Event of Default as defined in Section 13.01, A of this Agreement, Authority shall have the right to impose or re-impose the requirements of this Section 9.09 upon the Airline. At any time within thirty (30) days of such Event of Default, the Authority shall provide written notice to the Airline and the Airline shall within ten (10) days of the date of such written notice, provide the Authority with the required post-Event of Default Agreement Security. Such Agreement Security shall be maintained in effect by the Airline until the expiration of a period of twelve (12) consecutive months (beginning the effective date of the Agreement Security) or the expiration of this Agreement. Additionally during that time Airline shall not commit another act or omission that would again be cause for termination under Section 13.01 of this Agreement.

If, however, the Airline commits another Event of Default during this post-Event of Default twelve (12) consecutive month period, the Authority may apply any Agreement Security held by the Authority to the Airline's unpaid balance or call upon payment of the unpaid balance. If Airline is allowed to continue to operate after this additional Event of Default and Authority has applied the Agreement Security, Airline shall submit another Agreement Security acceptable to the Authority. The Authority shall have the right to re-impose the requirements of this Section on the Airline each time the Airline commits another Event of Default during the term of this Agreement if Authority has applied the Agreement Security or Airline does not have Agreement Security in place with the Authority. The Authority's rights under this Section shall be in addition to all other rights and remedies provided it under this Agreement and at law.

F. Following the expiration or earlier termination of this Agreement, and after all Rentals and other obligations of Airline have been satisfied, the Authority shall return the Agreement Security to the Airline as soon as reasonably possible.

## **ARTICLE X            OBLIGATIONS OF AUTHORITY**

### **SECTION 10.01    Maintenance and Operations**

- A.     Authority shall operate, maintain and keep in good repair, expending such amounts for O&M Expenses as shall be reasonable and necessary for the Airfield and other facilities at the Airport used by the Airline and its designated Affiliates in its Air Transportation Business, except for the obligations of Airline under Article IX. The Authority reserves the right (but shall not be obligated to the Airline) to maintain and keep in repair all other areas and facilities making up the Airport System.
- B.     Authority shall operate and maintain the Airport in a reasonably prudent manner and in accordance with the rules, regulations and orders of any federal or state agency having jurisdiction with respect thereto.
- C.     Authority shall supply Airfield lighting for the Airport, including adequate landing lights, floodlights, beacons and other field lighting.
- D.     Authority may, from time to time, temporarily or permanently close roadways, ramp and apron areas, doorways and any other areas of the Airport System for the purpose of facilitating necessary construction, maintenance, snow, ice or debris removal, or repairs. During such times reasonable means of ingress and egress to and from the Terminal Building and the Airfield will remain available to Airline. Authority shall consult with Airline prior to any such closing that would adversely affect Airline's operations at the Airport unless such closing is necessitated by circumstances that pose an immediate threat to the health or safety of persons using the Airport, or by efforts to comply with FAA and/or industry standards. The Authority shall employ or cause to be employed construction, reconstruction and repair techniques (including supervision and construction management) that will minimize operational delays or disruption reasonably expected to result from such construction, reconstruction or repair. Except as otherwise provided in Article IX, Airline hereby releases and discharges Authority, its Board, officers, directors, employees, successors and assigns, from any and all claims, demands or causes of action that Airline may have arising from the fact that such areas have been closed.

### **SECTION 10.02    Authority's Right to Inspect and Repair**

The Authority has the right to send authorized representatives, including its officers, employees, agents, contractors and furnishers of utilities and other services into the Leased Premises (including Airline's Exclusive Use premises) for the purpose of examining and inspecting those Leased Premises, for purposes necessary, incidental to, or connected with the Airline's compliance with its obligations under this Agreement or the performance of Authority's rights and obligations hereunder; in the exercise of its governmental functions; or for emergency repairs to utility services in the Leased

Premises. Airline shall allow such entry. Except in the case of any emergency, the Authority shall conduct such inspections during reasonable business hours, and either in the presence of the Airline's representatives, or after sufficient notice to allow the Airline to have a representative present. In exercising this right of entry, the Authority shall not unreasonably interfere with the Airline's use and occupancy of its Exclusive Use premises.

## **ARTICLE XI                          DAMAGE OR DESTRUCTION**

### **SECTION 11.01    Damage or Destruction of Facilities**

A.     If by reason of any cause the Terminal Building is damaged to such an extent that it is un-tenantable in whole or in substantial part, then:

1.     If the repairs and rebuilding necessary to restore the Terminal Building to its condition prior to the occurrence of the damage can in the reasonable judgment of the Authority be completed within ninety (90) days from the date on which the damage occurred, the Authority shall notify the Airline in writing and shall proceed promptly with such repairs and rebuilding; and in such event the Rentals for the Terminal Building provided in Article IV shall be abated pro rata for the period from the date of the occurrence of such damage to the date upon which such repairs and rebuilding are substantially completed (excluding final punch list items).

2.     If such repairs and rebuilding cannot, in the reasonable judgment of the Authority, be completed within such ninety (90) days, the Authority, at its option, to be evidenced by notice in writing to the Airline and delivered to Airline within thirty (30) days after the occurrence of such damage, may either (a) proceed promptly with said repairs and rebuilding, in which event the said Rentals shall be abated as aforesaid, or (b) terminate the Airline's obligation regarding the Leased Premises, in which event the said Rental therefore provided in Article IV shall be abated from and after the date of the occurrence of the damage.

3.     In the event such damage to the Terminal Building renders the Leased Premises un-tenantable, the Authority will make its best efforts to provide substitute facilities, or space, which the Airline may occupy. Substitute facilities or space within the Terminal Building will be made available to the Airline in accordance with the schedule of Rentals for the use of the Airport as then established by the Authority. Temporary substitute facilities or space outside the Terminal Building will be made available to the Airline in accordance with a schedule of charges to be determined at that time based on the Authority's cost to provide such temporary facilities or space. Airline will be under no obligation to accept such substitute facilities; if Airline declines to accept such facilities, Authority shall be under no obligation to provide them. If the Authority is unable to provide substitute space, the repair, rebuilding and abatement shall proceed as provided under Section 11.01, A, 1 and A, 2 above.

B. The obligations contained herein above shall not be construed to impose upon the Authority any obligations with respect to Airline's Personal Property or leasehold improvements installed by the Airline.

## **ARTICLE XII INSURANCE AND INDEMNIFICATION**

### **SECTION 12.01 Insurance**

A. Airline shall purchase and maintain:

1. Airline liability insurance for claims for property damage, bodily injury, including death, and personal injury allegedly resulting from the Airline's activities into, on, and leaving the Airport in an amount not less than fifty million dollars (\$50,000,000) per occurrence;
2. Liquor liability insurance in an amount not less than twenty-five million dollars (\$25,000,000) per each common cause;
3. Automobile liability insurance in an amount adequate to cover ground vehicles operating at the Airport by the Airline in an amount not less than one million dollars (\$1,000,000) per person and per occurrence; and
4. Workers Compensation; Employers Liability with coverages and limits as statutorily required by the state of Indiana and all other applicable states of operation with limits of at least one million dollars (\$1,000,000) per accident.

B. The policies listed above (except Workers Compensation) shall name the Authority as an additional insured, to the extent of the contractual liability assumed by the Airline under this Agreement.

C. Certificates of required coverages shall be delivered to the Authority prior to the effective date of this Agreement.

D. All certificates of insurance required herein shall be in a form satisfactory to the Authority and with a company or companies of recognized responsibility and standing in the aviation insurance industry and authorized to do business in the State of Indiana. Each policy shall provide that such policy may not be materially changed, altered, or cancelled by the insurer during its term without first giving at least thirty (30) days prior written notice to the Authority.

E. Either on or as soon as practical upon the expiration of any then-current policy of insurance, the Airline shall deliver to the Authority evidence showing that such insurance coverage has been renewed. Within ten (10) days after the date of written notice from the insurer of cancellation or reduction in coverage, the Airline shall deliver to the Authority a policy or certificate reinstating or otherwise providing the required insurance.

F. If at any time the Airline shall fail to obtain or maintain in force the insurance required herein, such failure shall be a material breach of this Agreement and the Authority may, upon written notice to the Airline, exercise its right to cancel this Agreement as outlined in Section 13.01.

G. The parties understand and agree that the minimum limits of the insurance herein required may become inadequate during the term of this Agreement, and further agree that the Authority may raise such minimum requirements after consultation with the Signatory Airlines.

## **SECTION 12.02 Indemnification**

A. The Airline shall protect, defend, and hold the Authority, its Board, officers, directors and employees harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incidental to the Airline's performance of its obligations under this Agreement and/or the use or occupancy of the Leased Premises by the Airline or the acts or omissions of the Airline's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death or damage may occur, except to the extent that such injury, death or damage is caused by the negligence or willful misconduct of the Authority.

B. The Authority shall give the Airline reasonable notice of any claims or actions against the Authority which directly or indirectly affects the Airline, and Airline shall have the right to compromise or defend the same to the extent of its own interest.

C. The Airline agrees that if a prohibited incursion into the Air Operations Area (as defined by the FAA) occurs, or the safety or security of the Air Operations Area, the Airfield and runway area, or other sterile area's safety or security is breached by or due to the negligence or willful act or omission of any of the Airline's or its Affiliate's employees, agents, or contractors and such incursion or breach results in a civil penalty action being brought against the Authority by the U.S. Government, the Airline will reimburse the Authority for all expenses, including attorney fees, incurred by the Authority in defending against the civil penalty action brought against the Authority and for any civil penalty or settlement amount paid by the Authority as a result of such incursion or breach of Airfield or sterile area security. The Authority shall notify the Airline of any allegation, investigation, proposed or actual civil penalty sought by the U.S. Government for such incursion or breach and Airline shall be permitted to contest any such penalty with the proper authorities. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of 49 C.F.R. Part 1542, Airport Security, 49 C.F.R. Part 1544, Airplane Operator Security, or 14 C.F.R. Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers.

D. The provisions of this Section shall survive the expiration or early termination of this Agreement for matters arising before such expiration or early termination.

## **ARTICLE XIII TERMINATION AND CANCELLATION**

### **SECTION 13.01 Cancellation by Authority**

A. Subject to Section 13.03, The Authority shall have the right to cancel and thereby terminate this Agreement in its entirety upon the happening of any one or more of the following events (the "Events of Default"), and to reenter and repossess the Leased Premises:

1. If the Rentals or other money payments that the Airline herein agrees to pay, or any part thereof, shall be unpaid on the date the same shall become due and shall remain unpaid for fifteen (15) days after receipt of a written notice of default from the Authority;
2. If the Airline violates any material provision of this Agreement with respect to the subletting of its Exclusive Use space and fails to cure such default within ten (10) days after written notice;
3. If any act occurs that deprives the Airline permanently of the rights, power and privileges necessary for the proper conduct and operation of its Air Transportation Business;
4. If Airline fails to provide evidence of insurance as specified in Section 12.01 above;
5. If the Airline voluntarily fails to provide scheduled air service at the Airport or abandons and ceases to use its Exclusive Use space for a period of thirty (30) consecutive days, except when such abandonment and cessation is due to fire, earthquake, strike, government action, default of the Authority, damage or destruction of the Leased Premises or other cause beyond the Airline's control;
6. If the Airline breaches this Agreement or uses or permits the use of the Airport Systems at any time for any purpose for which the use thereof at the time is not authorized by this Agreement or by a subsequent written agreement between the parties, or the Airline uses or permits the use thereof in violation of this Agreement or any law, rule or regulation to which the Airline has agreed to conform, and such breach continues un-remedied for fifteen (15) days;
7. If the Airline violates the provisions of Section 16.03 herein;
8. If the Airline materially violates any provisions of this Agreement with respect to its responsibilities regarding the maintenance of the Airport System; or

9. To the extent allowed by law, if the Airline shall file a voluntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or if the Airline is adjudicated bankrupt.

B. If the Authority exercises its right to cancel and thereby terminate this Agreement in its entirety, Airline shall be held liable for all obligations hereunder as they come due including Rentals from the date of such breach until the then current natural end of the term of this Agreement. However, if Authority obtains a new Air Transportation Business for the Airline's Exclusive Use Terminal Building premises, such Rentals shall be reduced after marketing, realtor commissions, improvements to the space for the new Air Transportation Business, and other costs incurred by the Authority to attract and secure such new Air Transportation Business have been applied to Airline's Rentals due for the residue of the term of this Agreement. In no event shall Landlord have a duty to place a new Air Transportation Business in the Airline's Exclusive Use premises until such time as all other available similar space owned and controlled by the Authority has been occupied by Air Transportation Businesses.

C. If by reason of any action or non-action of Congress or any federal or other governmental agency having jurisdiction to authorize the Airline to operate aircraft in or out of the Airport (including action in the nature of alteration, amendment, modification, suspension, cancellation or revocation of any such certificate, permit or document), the Airline shall cease to have authority to operate aircraft in or out of the Airport pursuant to such a certificate or document, provided that either (1) such governmental action or non-action was not requested by the Airline, or in the alternate, (2) the Airline gave the Authority reasonable advance notice that such governmental action or non-action was being requested.

## **SECTION 13.02 Cancellation by Airline**

A. Subject to Section 13.03, the Airline, at its option, may declare this Agreement terminated in its entirety upon the happening of any one (1) or more of the following events:

1. If by reason of any action or non-action of Congress or any federal or other governmental agency having jurisdiction to authorize the Airline to operate aircraft in or out of the Airport (including action in the nature of alteration, amendment, modification, suspension, cancellation or revocation of any such certificate, permit or document), the Airline shall cease to have authority to operate aircraft in or out of the Airport pursuant to such a certificate or document, provided that either (a) such governmental action or non-action was not requested by the Airline, or in the alternate, (b) the Airline gave the Authority reasonable advance notice that such governmental action or non-action was being requested;

2. If a court of competent jurisdiction issues an injunction against the Authority or any successor body to the Authority preventing or restraining the use of the Airport in its entirety or of any part of the Airport used by the Airline and substantially

necessary to the Airline for its operations, and if such injunction remains in force for at least ninety (90) days;

3. If the Terminal Building becomes un-tenantable in whole or substantial part; and the Authority does not terminate the lease thereof, pursuant to Article XI herein, and the Authority does not proceed as promptly as reasonably practicable with the repairs and rebuilding necessary to restore the Building to its condition prior to the occurrence of the damage;

4. If the Authority fails to provide and maintain reasonable means for unobstructed ingress and egress to and from the Terminal Building or Airfield in accordance with the provisions of this Agreement or if the Authority fails to fulfill its obligations under Section 16.06 in respect of Airline's right of quiet enjoyment granted thereby;

5. If by reason of any willful act, willful omission wrongfully done or wrongfully omitted to be done in violation of this Agreement, the Authority substantially interferes with the use by the Airline of the Terminal Building and Airfield for the purposes for which the use thereof at that time is authorized by this Agreement; or

6. If the Authority violates any provision of this Agreement with respect to the maintenance of the Terminal Building and Airfield.

### **SECTION 13.03 Cancellation by Either Party**

Notwithstanding anything to the contrary contained in this Agreement, no termination declared by either party shall be effective except as follows:

A. For termination for cause other than failure of the Airline to pay Rentals due under this Agreement, the terminating party must give thirty (30) days prior written notice of the date and cause of termination. If the termination is for default, the default must be specified in the notice. If the defaulting party cures the default during the thirty (30) day notice period, the termination shall not take effect. If the default is not by its nature curable within thirty (30) days, but the defaulting party begins to cure the default within that period, the termination shall not take effect as long as the defaulting party pursues that cure in an expeditious manner and cures the default as quickly as is reasonably practicable.

B. For termination declared for failure of the Airline to pay Rentals due under this Agreement, the Authority must give the defaulting Airline fifteen (15) days prior written notice of the date and cause of termination. If payment is made within that fifteen (15) day period, the termination shall not take effect.

C. For any termination for cause or failure of Airline to pay Rentals, the Airline shall be held liable for all obligations hereunder including Rentals from the date of such breach until the then current natural end of the term of this Agreement as outlined in further detail in Section 13.01 B above.



## **SECTION 13.04 Surrender and Holding Over**

A. The Airline covenants that at the expiration of the period for which any of the Building is leased to it, or at the earlier termination of the lease thereof, it will quit and surrender such premises in good state and condition, reasonable wear and tear excepted, and also excepting damage arising from acts, events or conditions beyond the control of the Airline. The Airline shall forthwith remove its Personal Property from the Leased Premises. The Airline further covenants and agrees that such premises and all structures and improvements thereon which by and under the terms of this Agreement are to remain on such premises as the property of the Authority, shall be in good usable order and condition, with allowance for reasonable wear and tear and damage by the elements, and also excepting damage arising from acts, events or conditions beyond the control of the Airline, and the Authority shall have the right upon such termination, to enter upon and take possession of such premises.

B. All of the Airline's Personal Property located in the Terminal Building shall be at the risk of the Airline only, and the Authority shall not be liable for damage to said Personal Property, damages to the Terminal Building caused by Airline, or to the said Airline, unless such damage is caused by the negligence or willful misconduct of the Authority.

C. In the event the Airline shall hold over and remain in possession of the Leased Premises after expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month-to-month which may be terminated at any time by the Authority. The Authority reserves the right to establish Rentals in accordance with applicable FAA guidelines during any such month-to-month period.

## **ARTICLE XIV ASSIGNMENT OR SUBLEASE**

### **SECTION 14.01 Assignment, Subletting, and Effect of Airline Bankruptcy**

A. Airline shall not at any time assign, transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Agreement, or any part of the Leased Premises, to any party without the prior written approval of the Authority, except with respect to any Affiliate or any company with which Airline may merge or consolidate, or which may acquire substantially all of the Airline's assets where the Authority approval will not be required.

No assignment, transfer, conveyance, or sublease by Airline shall relieve the Airline of its responsibility for payment of Rental and performance of all other obligations provided in this Agreement, without specific written consent by the Authority to such relief. The Authority's consent to such relief shall not be deemed unreasonably

withheld if, to protect its interests, the Authority determines that the Airline shall remain responsible for such payment and performance.

B. The consent requirement of Section 14.01, A above shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee, or by the Airline as a debtor in possession under Section 365 of the Bankruptcy Code, as amended; provided that adequate assurance of future performance is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

1. Adequate assurance of the reliability of the proposed source for the Rental payments and other charges due under this Agreement upon the assumption or assignment of this Agreement;

2. Adequate assurance that all other consideration and performances due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement, and

3. The procurement of a bond from a financially reputable surety as specified in Section 9.09 herein covering any costs or damages to the Authority should the assignee commit an Event of Default under this Agreement.

## **ARTICLE XV ACCOMMODATION**

It is the objective of the Authority to offer access to the Airport, to utilize space in the Terminal Building in the best interests of the Authority, and to provide the Airfield to all Air Transportation Businesses desiring to serve the Airport.

Authority hereby states its intent to facilitate the access of Air Transportation Businesses, and to maximize use of the Airport. These goals are to be achieved, if necessary, through sharing by Air Transportation Businesses of the Terminal Building facilities. The Authority reserves the right to take space used by an Air Transportation Business and/or adjust space within the Terminal Building at its sole reasonable discretion for the betterment of the Airport.

Such accommodations include but are not limited to the following scenarios:

1. Airline agrees, upon request by the Authority, that if an Air Transportation Business is unable to obtain from the Authority necessary facilities at the Airport, Airline will make all reasonable efforts to accommodate such other Air Transportation Business on a temporary basis by permitting such Air Transportation Business to use ticket counter space upon its/their request when such facilities are not needed for Airline's scheduled or planned operations or those of its Affiliates, sublessees, licensees or permittees. After obtaining the Authority's consent, Airline shall use its best efforts to execute a written agreement between Airline and such other Air Transportation Business setting forth the mutually agreed terms and conditions governing such use. Such agreement shall include a

space rental charge based upon Airline's prorated airport-imposed Rentals hereunder plus a reasonable administrative charge, additional charges for specified services rendered and facilities provided, if any, to the Air Transportation Business by the Airline, and insurance and indemnity provisions reasonably satisfactory to Airline.

2. At the Authority's option, the Authority may offer currently vacant Terminal Building space including ticket counter areas to other Air Transportation Businesses or to an FBO to Ground Handle such flights. The Authority and the Air Transportation Business or FBO shall enter into an agreement specifying the terms and conditions governing such use. Such agreement shall include a space rental charge based upon pro-rated Rentals hereunder.

## **ARTICLE XVI GENERAL PROVISIONS**

### **SECTION 16.01 Compliance with Law and Regulations**

A. The Airline shall not use its Leased Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all present and future applicable and lawful Rules, Regulations and Ordinances of the Authority, or any county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof that may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations that apply to or affect, either directly or indirectly the Airline or the Airline's operations and activities under this Agreement or the Airline's uses hereunder of the Airport or the Leased Premises. This obligation of compliance shall not prevent the Airline, without being considered in breach of this Agreement, from contesting any such laws or regulations as long as such contest is diligently commenced and prosecuted.

B. The Authority shall, whenever possible, make reasonable efforts to obtain uniform compliance to the Rules, Regulations and Ordinances; however, the Authority shall not be liable to the Airline for any violation or non-observance of such Rules, Regulations and Ordinances by any user, tenant, concessionaire, other airline, invitee, licensee, or trespasser at the Airport nor shall such violation or non-observance by a user, tenant, concessionaire, other airline, invitee, licensee or trespasser at the Airport constitute a waiver of the Airline's obligation to comply with the Rules, Regulations and Ordinances.

### **SECTION 16.02 Notices, Consents and Approvals; Amendments**

A. All notices, consents and approvals required or authorized by this Agreement to be given by or on behalf of either party to the other, shall be in writing and signed by a duly designated representative of the party by or on whose behalf they are given.

Until further notice to the Airline, the Authority hereby designates the Director as its representative to sign such notices, consents and approvals on its behalf. Until further notice to the Authority the Airline hereby designates \_\_\_\_\_ as its authorized representative to sign such notices, consents and approvals on its behalf.

Notices to the Authority shall be addressed to it and delivered at the following address:

Properties Manager  
Fort Wayne-Allen County Airport Authority  
3801 W. Ferguson Road, Suite 209  
Fort Wayne, Indiana 46809  
Phone: 260-446-3425  
Fax: 260-747-1762  
[properties@fwairport.com](mailto:properties@fwairport.com)

Notices to the Airline shall be addressed to it and delivered at the following address:

Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Notices required herein may be given either by hand or by certified or registered mail, postage prepaid, or at such other office in the continental United States as the Authority or Airline hereafter may designate by notice in writing to the other party.

B. This Agreement may be amended in whole or in part without further consideration upon mutual written consent of the Authority and the Airline.

### **SECTION 16.03 Federal Requirements; Nondiscrimination**

A. Without limiting the generality of any of the terms of this Agreement, the Airline for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, and as a covenant running with the land, hereby covenants and agrees that in the event facilities are constructed, maintained, or otherwise operated 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, the Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to the Airport and Airway Improvement Act of 1982, as amended, and any regulations issued thereunder, as well as all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

B. The Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof and as a covenant running with the land, hereby covenants and agrees that: (1) no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of premises or facilities, (2) that in the construction of any improvements on, over, or under such land the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from the participation in, denied the benefits of, or otherwise subjected to discrimination, and (3) that the Airline shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

C. The Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof and as a covenant running with the land, hereby covenants and agrees that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, Nondiscrimination in Airport Aid Program, or otherwise approved by the FAA, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E.

D. The Airline assures the Authority that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Section. The Airline assures that it will require that its contractors, sub-contractors, and Affiliates provide assurances to the Airline that they similarly will undertake affirmative action programs and that they will require assurance from their subsequent contractors, sub-contractors and affiliates, as required by 14 CFR Part 152, Subpart E, to the same effect.

E. The Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof and as a covenant running with the land, hereby covenants and agrees that it shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the Airline may make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

F. The Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof and as a covenant running with the land, hereby covenants and agrees that no person shall be excluded from participation in, denied the benefits or, or otherwise discriminated against in the performance of this Agreement on the grounds of race, color, national origin or sex, as provided in 49 CFR Part 23, Participation of Minority Business Enterprise in Department of Transportation Programs, or parallel regulations issued by the FAA.

G. Noncompliance with Section 16.03, A, B, C, D, E or F above after timely notice to the Airline by either the Authority or the U.S. Government regarding the Airline's noncompliance and failure of the Airline to substantially remedy such noncompliance within a reasonable period, shall constitute a material breach thereof, and in the event of such noncompliance, the Authority shall have the right to terminate this Agreement and the estate created hereunder, without liability therefor, or at the election of the Authority or the United States, either or both shall have the right to judicially enforce such provisions.

#### **SECTION 16.04 Successors and Assigns Bound by Covenants**

All the covenants, stipulations, and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

#### **SECTION 16.05 Governing Law; Venue**

A. This Agreement and all disputes between the parties arising hereunder shall be governed by the laws of the State of Indiana.

B. To the extent allowed by law, and regardless of the Airline's residence or place of business, the venue for any action arising from this Agreement shall lie in the state or federal court for the district in which Allen County, Indiana is located.

#### **SECTION 16.06 Quiet Enjoyment**

The Authority agrees that, upon payment of the Rentals and performance of the covenants and agreements on the part of the Airline to be performed hereunder, the Airline shall peaceably have and enjoy the Leased Premises and all the rights and privileges of the Airport, its appurtenances and facilities granted herein.

#### **SECTION 16.07 No Personal Liability**

A. No elected official, board member, commissioner, director, officer, agent, or employee of either party shall be charged personally or held contractually liable for any acts or omissions of the party, or its agents, servants, employees, or independent contractors, or for any conditions resulting from the operations or activities of the party. The Authority shall not be liable for any loss of or damage to any Personal Property, fixtures, or equipment installed or stored in on or about the Airline's Leased Premises or elsewhere at the Airport unless such loss or damage was caused by the negligence or willful misconduct of the Authority.

B. The Authority shall not be liable for the Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof.

## **SECTION 16.08 Incorporation of Required Provisions**

The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency having jurisdiction over the Airport System.

## **SECTION 16.09 Non-waiver of Rights**

A. No waiver of default by the Authority or the Airline 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 herein contained, to be performed, kept, and observed by the other party.

B. The failure of the Authority or the Airline, in one or more instances, to invoke a provision, term, covenant, reservation, condition, or stipulation of this Agreement, or to enforce or take action to enforce, or to demand performance by the other party hereto, or to insist on a strict performance by the other of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Agreement (with or without an explicit waiver of default) shall not be considered a waiver of the right to enforce or demand such performance. To have any effect, any waiver by either party of any provision of this Agreement must be in writing, and any such waiver shall be limited to the specific language of the writing and shall be narrowly construed.

## **SECTION 16.10 Consent of the Parties**

Where this Agreement requires the consent, approval, designation, or any other affirmative act of one or more parties, the Airline and the Authority agree that, except as otherwise provided herein, such consent, approval, designation, or affirmative act shall not be unreasonably withheld or delayed.

## **SECTION 16.11 Force Majeure**

A. Neither the Authority nor the Airline shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, acts of terrorism, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and/or which are not within its control. This provision shall not apply to failures by the Airline to pay Rentals or to make any other payments required by this Agreement. This provision shall not prevent either party from exercising its rights of termination and cancellation under Article XIII of this Agreement.

B. Any party claiming Force Majeure shall notify the other in writing of the existence of the claimed Force Majeure event, of the probable duration of that event, of any efforts it is making to fulfill its obligations under this Agreement in spite of that

event, and shall confirm in writing its intention to resume performance when reasonably possible.

#### **SECTION 16.12 Agreements with other Airlines**

The Authority agrees not to enter into any scheduled airline operating agreement and Terminal Building lease with any other airline conducting similar operations at the Airport after the date of this Agreement that contains more favorable Rentals and terms than those provided in this Agreement.

#### **SECTION 16.13 Headings**

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

#### **SECTION 16.14 Number and Gender**

Unless the context clearly indicates otherwise, singular words include the plural, plural words include the singular, the masculine includes the feminine, and words used in the present tense include the future as well as the present.

#### **SECTION 16.15 Cross-References and Incorporation of Exhibits**

All references to Articles, Sections, and Exhibits in this Agreement pertain to material in this Agreement, unless specifically noted otherwise. All Exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

#### **SECTION 16.16 Entire Agreement**

This Agreement, together with all Exhibits attached hereto, 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 writing, and executed by duly authorized representatives of the parties hereto.

#### **SECTION 16.17 Severability**

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



## **SECTION 16.18 Time is of the Essence and Calendar Days**

Time is of the essence in the performance of this Agreement. Where a party is given a certain number of days in which to act or fail to act, calendar days are intended unless otherwise specified.

## **SECTION 16.19 Advances by the Authority**

If the Airline should fail to do anything required to be done under the terms and conditions of this Agreement, except for the payment of Rentals, the Authority may, at its sole option and after giving reasonable written notice to the Airline, perform such act on behalf of the Airline. Upon notification to the Airline of the cost of such action, the Airline shall promptly pay the Authority the amount due.

## **SECTION 16.20 No Third-Party Beneficiaries**

Neither this Agreement nor any provision hereof nor any Exhibit to this Agreement shall create any right in favor of any person or entity other than the parties to this Agreement and their respective successors and assigns.

## **SECTION 16.21 Authority Not Liable**

Except as specifically provided for in this Agreement, the Authority shall not be under any duty or obligation to the Airline to repair or maintain the Exclusive Use premises, or any portion thereof, or any facilities or equipment constructed thereon. The Authority shall not be responsible or liable to the Airline for any claims for compensation for any losses, damages, or injury, including lost profits, sustained by the Airline resulting in failure of any water supply, heat, air conditioning, electrical power, or sewage or drainage facility, or caused by the natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, act of God, or state of war, act of terrorism, civilian commotion or riot, or any cause or peril beyond the control of the Authority, except to the extent covered by the Authority's insurance or if the loss, damage or injury was caused by the negligence or willful misconduct of the Authority..

## **SECTION 16.22 Security Protection**

The Airline acknowledges that security protection provided by the Authority is finite and limited to that generally provided to any other airline or business on the Airport and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Leased Premises, equipment, improvements, or the Airline's Personal Property or that of its employees or invitees shall be the sole responsibility of the Airline and shall involve no cost to the Authority. Should the Airline decide to provide such supplemental security service, it shall coordinate such service with the Authority.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals as of the date set forth below.

**AUTHORITY:**

**FORT WAYNE-ALLEN COUNTY  
AIRPORT AUTHORITY**

ATTEST:

\_\_\_\_\_

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

\_\_\_\_\_  
Torrance A. Richardson, A.A.E.  
Executive Director of Airports

**AIRLINE:**

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

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

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

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
F.L. Dennis Logan  
Attorney for the Fort Wayne-Allen County Airport Authority