

**AIRLINE-AIRPORT USE AND LEASE AGREEMENT**

**BY AND BETWEEN**

**MILWAUKEE COUNTY**

**AND**

---

General Mitchell International Airport  
Milwaukee, Wisconsin

**AIRLINE-AIRPORT USE AND LEASE AGREEMENT**

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**LIST OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Referenced in Section</u></b>	<b><u>Description</u></b>
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C	128	Cost Center Location Map
D	107	Aircraft Parking Apron Map
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THIS CONTRACT OF LEASE is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between MILWAUKEE COUNTY, a municipal corporation, organized and existing as one of the counties in Wisconsin (hereinafter referred to as "County"), and (in all caps) \_\_\_\_\_, INC., a corporation organized and existing under the Laws of the State of \_\_\_\_\_ (hereinafter referred to as "Airline").

W I T N E S S E T H:

WHEREAS, County is the owner of General Mitchell International Airport (hereinafter called the "Airport") and Lawrence J. Timmerman Airport, airports located in the City of Milwaukee, Milwaukee County, State of Wisconsin comprising the airport system; and

WHEREAS, Airline is engaged in the business of air transportation with respect to persons, property, cargo, express, and mail, and furnishes said service to Milwaukee and its environs; and

WHEREAS, Airline desires to lease certain premises and facilities and to obtain certain rights in connection with and on the Airport as a Signatory Airline; and

WHEREAS, County deems it advantageous to itself and to its operation of the Airport to grant and lease unto Airline certain premises and facilities and to grant the rights as herein set forth, upon the terms and conditions hereinafter stated;

THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, and other valuable consideration, County does hereby lease and let unto Airline, and Airline does hereby hire and take from County, certain premises, facilities, rights, licenses, services, and privileges in connection with and on the Airport, as follows:

**ARTICLE I: DEFINITIONS**

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

101. "Accounting System" means the system for collection, allocation, and reporting of revenues, expenses, and debt service associated with the operation of Airport Cost Centers and the Airport System as a whole, which was established by County to provide data to support the calculation of airline rates and fees required under this Agreement.
102. "Additional Bonds" shall mean the additional parity revenue Bonds and PFC-Backed Airport Revenue Bonds which the County reserves the right to issue in the future as provided in the Bond Resolution and obligations issued to refund any of the foregoing on a parity with the Bonds Similarly Secured.
103. "Additional Approved Capital Improvement" shall mean a Capital Improvement not included in the Five Year CIP as described in Section 702 but which is subsequently approved based upon the criteria described in Section 704.
104. "ADF Depreciation Account" shall mean that fund established in Section 520 of the Agreement.
105. "Affiliate" shall mean any commercial air transportation company designated in writing by Airline as an affiliate that is operating under the same flight code designator and either (1) is a parent or subsidiary of Airline or is under the common ownership and control of Airline or (2) is under contract (e.g., capacity purchase agreement) with Airline in respect to such operation. Each Affiliate shall execute an operating agreement with the County with terms consistent with the Agreement. Each of Affiliate's Originating Passengers, Enplaned Passengers and landed weight shall be counted and recorded



jointly with Airline's and rents and fees shall be at the same rate. The rents and landing fees for Airline calculated in accordance with Article V shall include the Originating Passengers and landed weight of each of its Affiliates. Airline shall serve as financial guarantor for all rentals and landing fees incurred by Airline and its Affiliate(s).

106. "Agreement" shall mean this Airline - Airport Use and Lease Agreement between the County and Airline as the same may be amended or supplemented from time to time.
107. "Aircraft Parking Apron" shall mean that part of the Ramp Area contiguous to the arrival and departure gates at Airport as shown in Exhibit D which are used for the parking of aircraft and support vehicles and the loading and unloading of passengers and cargo. The exact location, layout and assignment of Aircraft Parking Apron of Airline is as shown on Exhibit D attached hereto.
108. "Airline" shall mean the airline that has signed this Agreement.
109. "Airline-Airport Affairs Committee" or "AAAC" shall mean a Committee composed of a representative of each Signatory Airline and Signatory Cargo Airline to consult and coordinate with the County in matters related to the planning, promotion, development, operation and financing of the Airport System.
110. "Airline Non-Public Space" shall mean areas available to be rented by one or more airlines on an exclusive, joint use or common use basis that are not accessible to the public or airline passengers without an escort including concourse lower level offices, concourse upper level offices, ticket counter offices, baggage makeup areas, holdroom stairwells and baggage tug tunnels.

111. "Airline Premises" shall mean Exclusive Use Premises, Preferential Use Premises and Joint Use Premises.
112. "Airline Public Space" shall mean areas available to be rented by one or more airlines on an exclusive, joint use or common use basis that are accessible to the public or airline passengers without an escort including ticket counters, e-ticketing machine areas, club rooms, gate holdrooms, baggage service offices and baggage claim areas.
113. "Airport" shall mean General Mitchell International Airport, owned and operated by County, the boundaries of which are more particularly shown on Exhibit A attached hereto and made a part hereof, and such boundaries may be hereinafter amended from time to time.
114. "Airport Concession Revenues" shall mean all concession revenues earned at the Airport including, but not limited to, the items listed in Section 603 B.
115. "Airport Development Fund Account" or "ADFA" shall mean that fund established in Section 518 of the Agreement.
116. "Airport System" shall mean the Airport and the Lawrence J. Timmerman Airport.
117. "Airport Terminal Building" shall mean the main terminal and the International Arrivals Building at Airport and the appurtenances thereto, including skywalks, as shown on Exhibit E.
118. "Air Transportation Business" shall mean the carrying by aircraft of persons, property, cargo, and mail by an air carrier or air transportation company.
119. "Bond Resolution" shall mean the General Bond Resolution adopted June 22, 2000, and as further amended and supplemented from time to time,

that is the authorizing document for all outstanding revenue Bonds issued to finance facilities at the Airport.

120. "Bonds" shall mean the bonds authorized by the Bond Resolution and issued by the County and all Additional Bonds and other obligations issued as permitted by the Bond Resolution, including Existing Bonds, General Airport Revenue Bonds, PFC-Backed Airport Revenue Bonds and General Obligation Bonds, but does not include Special Facility Revenue Bonds.
121. "Calendar Year" shall mean the then-current annual accounting period of the County for its general accounting purposes, which is the period of twelve consecutive calendar months ending with the last day of December of any year.
122. "Capital Improvement" shall mean any improvement or equipment having a useful life of greater than one year and a total cost of at least \$200,000, which is amortized or depreciated over its estimated useful life.
123. "Capital Improvement Reserve Fund" or "CIRF" shall mean that fund established in the Bond Resolution and as further described in Section 517.
124. "Commencement Date" shall mean 12:01 A.M. on October 1, 2010 if this Agreement is executed by Airline within ninety (90) days of October 1, 2010, otherwise the Commencement Date shall be the date on which this Agreement is signed.
125. "Common Use" shall mean the nonexclusive use in common by Airline and other duly authorized tenants of Airport facilities and appurtenances together with all improvements, equipment, and services which have been or may hereafter be provided for such Common Use.

126. "Common Use Formula" means a formula that prorates Twenty Percent (20%) of a service charge or space rental equally among the Signatory Airlines (including their Affiliates) using the service or space and prorates Eighty Percent (80%) of the service charge or space rental among the Signatory Airlines (including their Affiliates) using the service or space so that each pays that proportion thereof which the number of its Originating Passengers at the Airport during the month bears to the total number of Originating Passengers by all Signatory Airlines at the Airport during the same month. Non-signatory airlines using the Common Use Premises shall pay a fee per Originating Passenger established by the County. An example of the application of the common use formula is shown in Exhibit R.
127. "Common Use Premises" means the areas leased by County to Airline for use by Airline in common with all other air transportation companies, whether or not signatory to this Agreement, as shown in Exhibit F.
128. "Cost Centers" means the areas (and functional activities associated with such areas) used in accounting for the amortization, the depreciation, the debt service and the Operation and Maintenance Expenses of the Airport for the purposes of calculating rents, fees, and charges, as shown on Exhibit C as may hereafter be modified or expanded, and as more particularly described below:
- (A) "Airfield Cost Center" means areas of the Airport used for the landing, taking-off, taxiing and movement of aircraft, including runways, taxiways, navigational aids, hazard designation and warning devices, the cargo airline aprons, aircraft deicing areas, airfield security roads and fencing, blast fencing, lighting, clear zones and safety areas, aviation easements, including land utilized in connection therewith or acquired for such future purpose or to mitigate aircraft noise, and associated equipment and facilities, the acquisition, construction or installation cost of which is wholly or partially paid by the

County. The net requirement of Timmerman Airport will be included in the Airfield Cost Center.

- (B) "Former 440<sup>th</sup> Military Base" means the land and improvements conveyed to County that formerly housed the USAF 440<sup>th</sup> Airlift Wing. The revenues, expenses and debt service and other fund requirements of the Former 440th Military Base shall be calculated to determine its net income or loss. The entire net income or loss shall be allocated to the Airfield Cost Center.
- (C) "Aircraft Parking Apron Cost Center" shall mean that portion of the Ramp Area immediately adjacent to the Airport Terminal Building that is used for the parking of aircraft and support vehicles and the loading and unloading of passengers and cargo.
- (D) "Passenger Loading Bridges Cost Center" means the passenger loading bridges and appurtenant equipment acquired by the County in accordance with Section 404, and available for use at any of the Gates in the Airport Terminal Building.
- (E) "Terminal Cost Center" means the area comprising the passenger terminal complex including all supporting and connecting structures and facilities and all related appurtenances to said building and concourses, excluding County-owned loading bridges. The Terminal Cost Center includes the revenues and expenses of the International Arrivals Building (IAB). The Terminal Cost Center also includes Airport Concession Revenues, of which ninety percent (90%) of those revenues listed in Section 603 (b) is credited to the Terminal Cost Center and ten percent (10%) is credited to the Airport Development Fund Account.
- (F) "Other Cost Centers" - means the County reserves the right to establish other subsidiary cost centers.

129. "Cost Center Requirement" means the amount derived by subtracting the total revenues allocated to a Cost Center from the total expenses allocated to such Cost Center.
130. "Cost of Capital" shall mean five percent (5%) per annum.
131. "Debt Service Coverage Fund" shall mean the Coverage Fund established under the Bond Resolution which shall at all times equal 25% of the Debt Service Requirement.
132. "Debt Service Reserve Fund" shall mean the Reserve Account established within the Airport Revenue Bond Special Redemption Fund under the Bond Resolution which shall at all times equal 100% of the Debt Service Requirement.
133. "Debt Service Requirement" shall mean the total, as of any particular date of computation for any particular period or year, the (a) scheduled amounts required during such period or year for the payment of principal and interest on all Bonds, during such period or Calendar Year and (b) other amounts required by the Bond Resolution.
134. "Director" shall mean the Airport Director or Acting Airport Director as from time-to-time appointed by the County and shall include such person or persons as may from time-to-time be authorized in writing by the County Executive or by the Transportation and Public Works Director of the County to act for him with respect to any or all matters pertaining to this Agreement.
135. "Enplaned Passengers" means all revenue and non-revenue originating, on-line transfer, and off-line transfer passengers boarded at the Airport.
136. "Exclusive Use Premises" shall mean those premises leased to Airline for Airline's sole use and occupancy subject to the rules,

regulations, and provisions of any federal, state, county and municipal jurisdiction as shown in Exhibit E.

137. "Existing Bonds" shall mean the General Obligation Bonds, PFC-Backed Airport Revenue Bonds and General Airport Revenue Bonds authorized and issued by the County before the Effective Date of this Agreement in whole or in part for Airport System facilities and improvements, and remaining outstanding, are set forth in Exhibit K.
138. "Federal Aviation Administration", hereinafter referred to as FAA, shall mean that agency of the U.S. Government created and established under the Federal Aviation Act of 1958, or its successor, which is vested with the same or similar authority.
139. "Five Year CIP" means the Five Year Capital Improvement Program for Calendar Years 2011 to 2015 as described in Section 702. A copy of the Five Year CIP is attached as Exhibit J.
140. "Gate Position" shall mean Airline's preferential use passenger gate(s) including Airline's preferential Aircraft Parking Apron and the Preferential Use holdroom, passenger loading bridge, and appurtenant furnishings in and about the Airport Terminal Building that are reasonably necessary for the use thereof as shown in Exhibit E.
141. "General Obligation Bonds" shall mean any General Obligation Bonds and/or bond anticipation notes authorized and issued by the County of Milwaukee for construction of or on the Airport.
142. "General Airport Revenue Bonds" or "GARBs" shall mean any bonds and/or bond anticipation notes secured by general airport revenues authorized and issued by the County of Milwaukee for construction of or on the Airport.

143. "Joint Use Formula" shall mean a formula that prorates the cost for an airline based upon the ratio of the number of its ticket counter positions divided by the total number of ticket counter positions serving the Joint Use baggage make-up area.
144. "Joint Use Premises" means the ticket counters and baggage make-up areas leased by County for use by one or more airlines.
145. "Landing Area" shall mean those portions of the Airport (exclusive of buildings, hangars, and aircraft storage areas) provided for landing, takeoff, and taxiing of aircraft, approach and turning zones, aviation easements, easements, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith.
146. "Leased Premises" shall mean the Exclusive Use Premises, Preferential Use Premises, Joint Use Premises and Common Use Premises leased to Airline by County.
147. "Major Maintenance Project - Expensed" shall mean any improvement or equipment having a total cost of less than \$50,000, which is expensed in one year.
148. "Major Maintenance Project - Capitalized" shall mean any improvement or equipment having a useful life of greater than one year and a total cost of at least \$50,000 but not more than \$200,000, funded by the Capital Improvement Reserve Fund, which is amortized or depreciated over five years or those funded by the Airport Development Fund Account, the cost of which is not amortized or depreciated. No MII approval is required in order for the County to proceed with a Major Maintenance Project - Capitalized.
149. "Majority-In-Interest" or "MII" means those Signatory Airlines (and Signatory Cargo Airlines only with respect to projects located in the Airfield Cost Center or the Former 440<sup>th</sup> Military Base) and that: (i)



represent no less than 51% in number of the Signatory Airlines (and Signatory Cargo Airlines, for applicable projects), and (ii) paid no less than 51% of the total rents, fees, and charges paid by all Signatory Airlines (and Signatory Cargo Airlines, for applicable projects) during the immediately preceding Fiscal Year. No airline shall be deemed to be a Signatory Airline or a Signatory Cargo Airline for purposes of this definition if such airline is under an Event of Default pursuant to, and has received notice in accordance with, Article XI.

150. "Maximum Gross Certificated Landing Weight" means the maximum weight, in one thousand (1,000) pound units, at which each aircraft operated by Airline is authorized by the Federal Aviation Administration to land, as recited in Airline's flight manual governing that aircraft.
151. "Net Financing Requirement" shall mean the amount of project cost remaining to be funded after deducting federal and state grant proceeds, PFC revenues, ADFA funds and any other equity funding not recoverable from airline rates and charges.
152. "Net Financing Requirement Cap" shall mean one hundred percent (100%) of the Net Financing Requirement as shown in the Five-Year CIP in Exhibit J.
153. "Non-Signatory Airline" shall mean an airline which is not a party to this Agreement.
154. "Originating Passengers" means all originating revenue passengers boarded at the Airport
155. "Operation and Maintenance Expenses" or "O&M" shall mean the reasonable, lawful, and necessary current expenses of the County, as determined by County, paid or accrued in administering, operating,

maintaining and repairing the Airport System. Without limiting the generality of the foregoing, the term "Operation and Maintenance Expenses" shall include all costs directly related to the Airport System, including, but not limited to: (1) costs of collecting Revenues and of making any refunds therefrom lawfully due others; (2) engineering, auditing, legal and other overhead expenses directly related to its administration, operation, maintenance and repair; (3) costs of all or a portion of the salaries, wages and other compensation of officers and employees and payments to pension, retirement, health and hospitalization funds and other insurance, including self-insurance for the foregoing with respect to officers and employees of the County which are properly allocable to the Airport System; (4) costs of repairs, replacements, renewals and alterations not constituting a Capital Improvement or a Major Maintenance Project - Capitalized, occurring in the usual course of business of the Airport System; (5) taxes, assessments and other governmental charges, or payments in lieu thereof, imposed on the Airport System or any part thereof or on the operation thereof or on the income therefrom or on any privilege in connection with the ownership or operation of the Airport System or otherwise imposed on the Airport System or the operation thereof or income therefrom; (6) costs of utility services with respect to the Airport System; (7) costs and expenses of general administrative overhead of the County allocable to the Airport System; (8) costs of equipment, materials and supplies used in the ordinary course of business not constituting a Capital Improvement or a Major Maintenance Project - Capitalized including ordinary and current rentals of equipment or other property allocable to the Airport System; (9) costs of fidelity bonds, or a properly allocable share of the premium of any blanket bond, pertaining to the Airport System or Revenues or any other moneys held under the Bond Resolution or required by the Bond Resolution to be held or deposited under the Bond Resolution; (10) costs of carrying out the provisions of the Bond Resolution, including trustee paying agents' fees and expenses; costs of insurance required by the Bond

Resolution, or a properly allocable share of any premium of any blanket policy pertaining to the Airport System or Revenues, (11) costs of recording, mailing and publication; and (12) all other costs and expenses of administering, operating, maintaining and repairing the Airport system arising in the routine and normal course of business; provided, however, the term "Operation and Maintenance Expenses" shall not include: (a) costs of extensions, enlargements, betterments and improvements to the Airport System or reserves therefor; (b) reserves for operation, maintenance renewals and repairs occurring in the normal course of business; (c) payment (including redemption) of Bonds or other evidences of indebtedness or interest and premium thereof or reserves therefor; (d) allowances for depreciation and amounts for capital replacements or reserves therefor; and (e) operation and maintenance costs and expenses pertaining to any Special Facility.

156. "O&M Reserve Fund" shall mean that fund maintained by County in an amount at all times equal to two months of Operation and Maintenance Expenses as required by the Bond Resolution.
157. "Person" and "Persons" shall mean individuals, partnerships, firms, corporations, and other legal entities.
158. "PFC" shall mean a passenger facility charge as established by 14 CFR Part 158.
159. "PFC-Backed Airport Revenue Bonds" shall mean any Bonds and/or any bond anticipation notes secured by general airport revenues and by Passenger Facility Charges authorized and issued by the County of Milwaukee for construction of or on the Airport.
160. "Preferential Use Premises" are those premises shown in Exhibit E leased to Airline for its use and occupancy on a basis that gives Airline priority of use over all other users, subject to the

provisions of this Agreement and the rules, regulations, and provisions of any federal, state, county and municipal jurisdiction.

161. "Ramp Area" shall mean the aircraft parking and maneuvering areas in the vicinity of the Airport Terminal Building.
162. "Requesting Airline" means any Airline requesting an accommodation for the use of space at the Airport because of plans to begin or to increase the number of flights at the Airport.
163. "Revenue Landing" shall mean an aircraft landing at Airport in conjunction with a flight for which Airline makes a charge or from which revenue is derived for the transportation by air of persons or property including flights diverted from other airports, but "Revenue Landing" shall not include any landing of an aircraft which, after having taken off from Airport, and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.
164. "Revenues" shall mean all moneys received from any source by the Airport System or by the County with respect to the Airport System, including, without limitation, all rates, fees, charges, rents and other income derived from the ownership or operation of the Airport System, including investment earnings on the funds and accounts established in the Bond Resolution to the extent provided in the Bond Resolution. Revenues shall not include any passenger facility charges described substantially in the manner provided in Section 1113 of the Federal Aviation Act of 1958, as amended, or the rules and regulations promulgated thereby, or any other similar charges that may be imposed pursuant to federal law unless all or a portion of passenger facility charges are pledged as "Revenues" under the Bond Resolution. Unless and to the extent otherwise provided by supplemental Bond Resolution, "Revenues" do not include (a) the

proceeds of Bonds or other borrowings by the County, (b) the proceeds of grants and gifts for limited purposes or the proceeds of the disposition of property financed by such grants and gifts, (c) condemnation proceeds or insurance proceeds except insurance proceeds received from rental or business interruption insurance, (d) all income and revenue collected and received with respect to properties and facilities which are not included in the definition of Airport System, or (e) payments from any Special Facility.

165. "Rules and Regulations" means any rules, regulations, statutes and ordinances promulgated by federal, state, County or any local government for the orderly use of the Airport System by both the airlines and other tenants and users of the Airport System as the same may be amended, modified, or supplemented from time to time. Copies of the current Rules and Regulations are available upon request to County.
166. "Scheduled Air Carrier" shall mean an air transportation company performing or desiring to perform, pursuant to published schedules, commercial air transportation services over specified routes to and from Airport, and holding any necessary authority to provide such transportation from the appropriate federal or state agencies.
167. "Signatory Airline" shall mean a Scheduled Air Carrier which has executed this Agreement with the County that includes the lease of Exclusive Use Premises and Preferential Use Premises directly from the County.
168. "Signatory Cargo Airline" shall mean a scheduled cargo carrier which has executed an agreement with County or from County's third party developer that includes the lease of cargo building space and preferential cargo ramp space directly from the County for a term comparable to the term of this Agreement.

169. "Special Facility" shall mean any capital improvements or facilities, structures, equipment and other property, real or personal, at the Airport System, which is designated as a "Special Facility" under the Bond Resolution.
170. "Special Facility Bonds" shall mean any revenue bonds, notes, bond anticipation notes, commercial paper, certificates of participation in a lease agreement or other evidences of indebtedness for borrowed money issued by the County to finance a Special Facility, the principal of, premium, if any, and interest on which are payable from and secured by the Special Facility Revenues derived from such Special Facility, and not from or by Revenues.
171. "Surplus Fund" shall mean the fund by that name as established under the Bond Resolution.
172. "Timmerman Airport" shall mean the general aviation reliever airport owned by the County, as shown in Exhibit B.
173. "Total Landed Weight" means the sum of the Maximum Gross Certificated Landing Weight for all aircraft arrivals of Airline over a stated period of time.
174. "Transportation Security Administration" or "TSA" means the Transportation Security Administration created under the Aviation and Transportation Security Act of 2001 as amended.

Additional words and phrases used in this Agreement but not defined herein shall have the meanings set forth in the Bond Resolution or, if not so set forth, shall have their usual and customary meanings.

**ARTICLE II: TERM OF THE AGREEMENT**

**Section 201 Term**

The term of this Agreement shall begin on the Commencement Date and shall terminate at midnight on December 31, 2015 unless sooner terminated under the provisions hereof.

**Section 202 Option to Extend Term**

The term of this Agreement may be extended for an additional period of five years ending December 31, 2020 upon the mutual agreement in writing of the County and Airline by December 31, 2014, approval by Airline of a new Five Year Capital Improvement Plan for the Years 2016 through 2020 that specifies the sources of funding for each project, and agreement on a new Net Financing Requirement Cap.

**Section 203 Holding Over**

If Airline holds over after the expiration or early termination of this Agreement, the resulting tenancy shall be on a month-to-month basis, during which tenancy the parties to this Agreement shall continue to adhere to all of the covenants, conditions and provisions of this Agreement; provided, however that, unless otherwise agreed to by the Airport Director, Airline shall be deemed to be a Holdover Airline for purposes of Article VI, and shall pay to the County one hundred and fifty (150) percent of the rents, fees, and charges then applicable to Signatory Airlines. Acceptance by the County of payment of rents, fees, and charges after expiration or early termination of this Agreement shall be deemed to be payment on account, and shall not operate to waive or modify any provision of this Section.

**ARTICLE III: AIRLINE RIGHTS, PRIVILEGES AND LIMITATIONS**

**Section 301 Use of Airport**

Subject to the terms of this Agreement, Airline shall have the right to conduct its Air Transportation Business at the Airport and to perform all operations and functions that are incidental or necessary to the conduct of such business at the Airport. Nothing in this Article shall be construed as authorizing Airline to conduct any business separate and apart from the conduct of its Air Transportation Business at the Airport. The Airline Premises and any other leased property subject to this Agreement shall be used only in the Air Transportation Business of the Airline. Any rights not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to the County.

- (A) Use in Common of Airport Terminal Building. Airline shall have the right to use, in common with, and subject to the rights of others so authorized, the public areas and public facilities of the Airport Terminal Building.
  
- (B) Use in Common of Airfield Operations Area. Airline shall have the right to use the areas included in the Airfield Cost Center, in common with others so authorized, to land, takeoff, fly over, taxi, tow, park, and condition Airline's aircraft. Airline shall have the right to park, service, deice, load, unload, provision, and maintain Airline's aircraft and support equipment in areas designated by the Airport Director, subject to the availability of space. Airline shall not knowingly permit, without the consent of the Airport Director, the use of the Airfield Operations Area or any portion thereof by any aircraft operated or controlled by Airline that exceeds the design strength or capability of such area as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual, a copy of which shall



be provided, upon request, by the County to Airline.

- (C) Airline Operations. Airline shall have the right to handle reservations; sell tickets, including electronic tickets; provision aircraft; document shipments; and load and unload persons, property, cargo, and mail, including interlining with other airlines.
  
- (D) Maintenance of Aircraft and Equipment. Airline shall have the right to conduct routine servicing by Airline, or by its suppliers of materials or by its furnishers of routine services, of aircraft operated by Airline or by other airlines at its assigned Aircraft Parking Apron, or as otherwise permitted by the County's Rules and Regulations; provided, however, that Airline shall not do, or permit to be done any heavy maintenance (e.g., engine changes, control surface replacements and overhauls) at its assigned Aircraft Parking Apron unless such maintenance is consented to by the Airport Director. Airline shall restrict its maintenance and/or repairs of ground support equipment (e.g., baggage carts, power units, and trucks) only to areas designated by the Airport Director for that purpose. The Airport Director reserves the right to require all third-party suppliers of materials or furnishers of services doing business at the Airport to secure an operating agreement from the County, to comply with all applicable Rules and Regulations, and to pay any applicable fees, not to include a percentage of gross revenues, to the County for conducting such activity at the Airport.
  
- (E) Ramp Support. Subject to applicable fees and charges, Airline shall have the right to use water, electric power, telephone, and preconditioned air systems, to the extent supplied by the County, at or adjacent to Airline's assigned Aircraft Parking Apron. To the extent such systems are not supplied by the County, Airline shall have the right to purchase, install, use, and maintain, at Airline's assigned Aircraft Parking Apron, equipment and services necessary for loading, unloading, and general servicing of Airline's aircraft,

auxiliary power systems, air start systems, preconditioned air systems, and other miscellaneous aircraft and aircraft-related support equipment and facilities.

(F) Storage of Fuels, Lubricants, and Deicing Fluids. Airline shall have the right to erect or install and maintain on the Airport, only at locations designated, and in a manner approved by the Airport Director, adequate storage facilities for fuels, lubricants, and deicing fluids, together with the necessary pipes, pumps, motors, filters and other appurtenances incidental to the use thereof. Airline shall install, maintain, and operate such storage facilities in full compliance with all applicable federal, state and local laws and regulations, and in accordance with insurance underwriters' standards. The County reserves the right to assess a reasonable rental or use charge for any such storage areas, if located outside the Airline Premises.

(1) Airline shall apply deicing/anti-icing fluids only in areas in which appropriate containment systems are operational, or in areas otherwise designated by the Airport Director in the approved snow plan. The County reserves the right to include the costs associated with the operation and maintenance of containment systems in the Airfield Cost Center.

(2) All non-hydrant fueling trucks are subject to Airport rules and regulations.

(G) Personnel. Airline shall have the right to hire and train personnel in the employ of or to be employed by Airline at the Airport.

(H) Customer Service. Airline shall have the right to provide to its passengers such services that Airline normally provides at similar airports, such as skycaps and wheelchair services. Airline shall not provide any type of motorized passenger cart services within the Airport Terminal Building without the approval of the Airport

Director, which shall be granted or denied on a nondiscriminatory basis.

(I) Test of Aircraft and Equipment. Airline shall have the right to test aircraft and other equipment owned or operated by Airline; provided that such testing is incidental to the use of the Airport in the operation by Airline of its Air Transportation Business and will not hamper or interfere with use of the Airport and its facilities by others entitled to use of the same and that such testing is conducted in areas designated by the Airport Director for that purpose. The County reserves the right to restrict any testing operations it deems to interfere with the safe and efficient use of the Airport and its facilities or to create excessive noise as determined by the Airport Director.

(J) Use of Ground Transportation. Airline shall have the right to provision, load and unload persons, property, cargo, and mail by motor vehicles or other means of conveyance, operated by itself or provided by third-party suppliers, as Airline may desire or require in the operation of its Air Transportation Business, via routes and at locations designated by the Airport Director; provided, however, that the Airport Director reserves the right to require such third-party supplier or suppliers to secure an operating agreement from the County, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the County to conduct such activity at the Airport.

(K) Modification of Airline Premises. Airline shall have the right to conduct the following activities within its Airline Premises:

- (1) build, install, maintain and operate facilities and equipment for all activities related to its Air Transportation Business at the Airport, including: check-in and ticket counters; ticketing kiosks; reservations offices; administrative offices; operations offices; lockers, restrooms, and related facilities for its

employees; and baggage, cargo, and mail handling and storage space; provided, however, that the particular Airline Premises are designed to be used for said purpose or that said use has been approved in writing by the Airport Director and all applicable permits have been secured by Airline;

- (2) install and maintain personal property, including furniture, furnishings, supplies, machinery, and equipment deemed necessary or prudent for the operation of its Air Transportation Business; title to such personal property shall remain with Airline, subject to the provisions of this Agreement;
- (3) install and maintain wall treatments and other identifying signs, subject to the prior approval of the Airport Director, and provided that such signs shall be substantially uniform in size, type, and location with those of other Signatory Airlines, harmonious and in keeping with the pattern and decor of the Airport Terminal Building, and consistent with the County's graphics standards and standards for mounting; and
- (4) construct modifications, finishes, and improvements deemed necessary or prudent for the operation of its Air Transportation Business, subject to the approval and permitting requirement provisions of Article VII

In the event Airline does not obtain the written approval of the Airport Director for the above modifications or does not complete the modifications, the Airport Director may require Airline to remove the modifications or, upon failure to remove, may cause the modifications to be removed at Airline's expense.

- (L) Airline Clubs. Airline shall have the right to furnish and operate a preferred customer, VIP club, or similar private club. In addition to its space rents, Airline shall pay a concession fee if it provides goods or services for a charge, which concession fee shall be the

applicable concession fee rate for like sales payable at the Airport; provided that no such payment shall be required with respect to: (i) goods or services obtained from concessionaires already obligated to make payments to the County with respect to such goods or services, (ii) the rent of conference room space within the club, and (iii) reciprocal club membership fees. Notwithstanding the above, club membership fees shall be exempt from concession fees. At Airline's option, such preferred customer or VIP club may be shared with one or more other airlines.

(M) Handling Arrangements. Airline shall have the right to enter into or conduct handling arrangements as part of its Air Transportation Business at the Airport.

(1) The rights granted to Airline pursuant to this Article may be exercised on behalf of Airline by its Affiliates, by other Signatory Airlines, by Airline's wholly-owned subsidiary service companies or by third-party suppliers; provided, however, that the County reserves the right to require such wholly-owned subsidiary service companies or third-party suppliers to secure an operating agreement from the County, to comply with all applicable Rules and Regulations, and to pay any applicable fees, not to include a percentage of gross revenues, to the County to conduct such activity at the Airport.

(2) Airline may exercise on behalf of its Affiliates or other Signatory Airlines any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation Business at the Airport, subject to rents, fees, and charges applicable to such activities.

(3) Ground-handling arrangements entered into under authority of this provision shall be subject to the provider obtaining an operating agreement from the County.

(N) Airport Access. Airline shall have the right of ingress to and egress from the Airport including its Leased Premises and the public areas and public facilities of the Airport Terminal Building, for Airline's employees, agents, contractors, passengers, guests, invitees, licensees, suppliers of materials and providers of service, and its or their equipment, vehicles, machinery, and other property; provided, however, that the foregoing shall not preclude the County from: (i) subjecting such persons to the County's Rules and Regulations, (ii) requiring such persons to enter into an agreement with the County when such access is required on an ongoing basis, or (iii) imposing any charge, permit or license fee for the right to do business at the Airport; further provided, however, that ingress to and egress from the Airport may be conditioned on adherence to security requirements, and may be limited on temporary bases for security reasons.

(O) Right to Purchase Services and Products. Airline shall have the right to purchase or contract for the purchase of the following services and products subject to the limitations contained herein:

(1) Airline may purchase or otherwise obtain products of any nature, including aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, propellants, passenger supplies and other materials, equipment, supplies, articles, and goods, used or acquired by Airline in connection with or incidental to Airline's Air Transportation Business at the Airport from any person or company; provided, however, that the County reserves the right to require such person or company to secure an operating agreement from the County, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the County to conduct such activity at the Airport.

(2) Airline shall have the right to contract with a third party or Airline-owned ground handler to provide to it or to perform for

it any of the services or functions which it is entitled to perform hereunder, provided that such third party or Airline-owned ground handler must secure an operating agreement from the County, maintain any permits and pay all fees required by the County. The contractual relationship between any third party and Airline shall not affect in any way the fulfillment of Airline's obligations, including those of insurance and indemnification for activities, hereunder.

- (3) Any suppliers, contractors or agents performing services for, or selling products to, Airline at the Airport shall secure an operating agreement from the County, conform to applicable performance standards, lease requirements, and the County's Rules and Regulations, including any permit requirement or payment of fees required by the County.

(P) Communications and Weather Equipment, Multi-User Flight Information Display System (MUFIDS) and Public Address System. Airline shall have the right to use the following communications equipment, flight information displays, and public address systems in conjunction with the conduct of its Air Transportation Business:

- (1) Subject to the prior approval of the Airport Director and conditions stated below, Airline shall have the right to install, maintain, and operate, alone or in conjunction with any other Signatory Airline(s), or through a nominee, such radio, telecommunications (both wire line and wireless), meteorological, aerial navigation, proprietary passenger information, operational display and computer equipment, facilities and associated wiring, as may be necessary for the conduct of Airline's Air Transportation Business at the Airport. The location of such equipment and facilities, method of installation, and type of equipment shall be subject to the prior approval of the Airport Director. The Airport Director may require modification, removal,

or relocation of such equipment if it interferes with other communication, meteorological, or aerial navigation systems operated by the County, other tenants, or governmental agencies. Such modification, removal, or relocation shall be at the Airline's sole cost. The County shall have the right to charge a fee, surcharge, or rental charge for any equipment location outside of Airline's Airline Premises. The County retains the right to impose reasonable and non-discriminatory access fees to third-party telecommunications and data service providers.

(2) Airline shall provide electronic flight arrival and departure information through County-installed systems and shall cooperate with the County's installation and maintenance of centralized and remote flight information displays.

(3) Airline shall have the right to use, in common with others so authorized, the public address system serving the Airport Terminal Building. Airline shall not install, cause to be installed, or use any other public address system at the Airport Terminal Building without the prior approval of the Airport Director.

(4) Airline shall comply with the Airport's Radio Frequency Systems Antenna/Radio Frequency Policy, as amended from time to time.

(Q) Food and Beverage. Airline shall have the following rights to prepare, package, and/or distribute food and beverages with respect to the conduct of its Air Transportation Business at the Airport:

(1) Airline shall have the right to purchase, prepare, and/or package food and beverages to be distributed at no cost to passengers of Airline or its Affiliates without paying the applicable concession fee. Airline shall pay a concession fee in the same amount paid by concessionaries at the Airport for all food and beverages purchased, prepared, and/or packaged to be sold at the



Airport; provided that no such payment shall be required with respect to food and beverages obtained from vendors already obligated to make payments to the County with respect to such food and beverages. Moreover, if Airline provides in-flight food and beverage preparation services to other airlines other than its Affiliates, Airline shall pay a concession fee. The concession fee to be paid by Airline shall be the applicable concession fee rate paid by in-flight food catering concessionaires located at the Airport.

- (2) If Airline purchases food and beverages from an off-Airport caterer for delivery to Airline at the Airport, said caterer shall have a contract with, or permit from, the County to do business at the Airport, and said caterer shall be subject to a concession fee equal to the concession fees paid by in-flight food catering concessionaires located at the Airport.
- (3) Airline shall have the right to distribute food and/or beverages to passengers at no cost from Airline's Airline Premises in the event of service delays or other emergencies.
- (4) Airline shall have the right to install soft drink and/or snack vending machines in its non-publicly accessible Airline Premises for the sole use of Airline's employees, contractors, and agents. Such sales shall not be subject to a concession fee. Vending machines shall not be within the view of the general public. Vending machine locations are subject to the prior approval of the Airport Director.

(R) Display Materials. Airline shall have the right to place materials at its ticket counters where applications for credit cards may be made and other of Airline's services may be promoted and offered. Airline shall have the right to do the same at booths, stands, and/or tables within its Airline Premises, subject to the approval of the Airport

Director, not to be unreasonably withheld.

- (S) Strict Construction of Rights. The rights granted to Airline hereunder may be exercised by Airline only to the extent such rights are necessary or incidental to the conduct by Airline of its Air Transportation Business at the Airport.

**Section 302 Prohibition Against Exclusive Rights**

It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the County reserves the right to grant to others the privilege and right of conducting any or all activities of an aeronautical nature.

**Section 303 Restrictions on Exercise of Rights and Reservation of Rights to County**

The rights established in this Article shall not be exercised so as to interfere with the County's operation of the Airport for the benefit of all aeronautical users, and shall be subject at all time to the restrictions herein and reservation of rights by the County.

- (A) No Interference with Operations. If the Airport Director determines that Airline or its employees, agents, affiliates, contractors or suppliers are exercising the rights and privileges granted to Airline pursuant to this Article: (i) in a manner which interferes with the operation or maintenance of the Airport; (ii) in a manner which adversely affects the health, safety or security of the public or other users of the Airport; or (iii) in a manner which fails to comply with the County's Rules and Regulations or terms of this Agreement, the Airport Director shall give Airline Notice of such determination including the specific reasons therefore. Airline shall promptly

commence and diligently pursue actions necessary to correct the conditions or actions specified in such Notice. If such conditions or actions are not, in the opinion of the Airport Director, promptly corrected after receipt of such Notice or if such conditions or actions required corrective action over a period of time, and Airline has not, in the reasonable opinion of the Airport Director, promptly commenced and diligently pursued all such corrective action, then upon 10 days Notice from the County to Airline, the County may suspend Airline's or its contractor's access to the Airport. Notwithstanding the foregoing provision, the County shall have the right, upon Notice to Airline, to immediately suspend operations of Airline or of said contractors if such action is necessary to protect the health, safety or security of the public or other users of the Airport or in emergency situations.

- (B) Integration with Systems. Airline shall not knowingly do, or permit to be done, anything that may interfere with the effectiveness or accessibility of the drainage, sewer, water, communications, heating or ventilation, air conditioning, natural gas, sprinkler, alarm or fire protection systems, fire hydrants and hoses, or any other part of the utility, electrical, or other systems installed or located from time to time at the Airport.
- (C) Right to Designate Location. The County reserves the right to designate the locations within which all of the activities conducted at the Airport, including the activities authorized herein, shall be conducted, and to reasonably change such designations from time to time; provided, however, that the County shall comply with the provisions of this Agreement if Airline's Airline Premises, or any portion thereof, are relocated as a result of any re-designation. To the extent that such designation changes or effects the Airline's Air Transportation Business conducted at the Airport, the County shall provide Airline written notice thereof and shall seek to mitigate any real or potential negative impact to such Air Transportation Business.

(D) Airport Access. The County may, from time to time, temporarily or permanently close or restrict specific roadways, taxiways, taxi lanes, runways, apron areas, doorways, and any other area at the Airport; provided, however, that, unless an emergency situation exists, to the extent that the County deems it practical, Airline shall be notified with regard to such closings in order to minimize the disruption of services being provided. The County shall have the right at any time or times to relocate, reconstruct, change, alter, or modify any such means of access provided for pursuant to this Agreement or otherwise, either temporarily or permanently; provided that a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. The County shall reasonably notify Airline of any such action.

(E) Telecommunication and Data Networking Infrastructure. The Airport Director, acting in its capacity as manager of the Airport, retains the right to act as or designate the provider of wireless and wireline public telecommunications services and public data networking infrastructure for the general public in the public accessible areas of the Airport, including club rooms. In the event County's wireless internet provider is unable to meet Airline's needs in Airline's club room, Airline shall have the right to establish such service in its club room. The Airport Director shall have the sole right to determine the location of, and install or cause to be installed, all public telephones, public telefax, wireless access, and other public telecommunications devices and conduit in any part of the Airport, provided that doing so does not (i) unreasonably interfere with Airline's operations authorized hereunder or (ii) substantially diminish the space contained in or the functionality of Airline's Airline Premises. Airline shall not install or cause to be installed any device or equipment that interferes or causes interference with any electronic device or equipment used, installed, or authorized by the County. Upon reasonable prior notification by the Airport

Director, the County shall be entitled to reasonable access to Airline's Airline Premises to install or service such devices. The County shall be entitled to all income generated by such telephones and devices and shall have the right to collect reasonable and non-discriminatory charges for access to the telecommunications/data networking infrastructure except for systems or components which are owned by Airline.

(F) Informational Devices. The County reserves the right to install or cause to be installed informational devices, including static and electronic advertising, in all public accessible areas of the Airport Terminal Building; provided, however, that such installation shall not unreasonably interfere with the operations of Airline authorized herein. Upon reasonable prior notification by the Airport Director, the County has the right to enter Airline's Airline Premises to install or service such devices. The County shall be entitled to all income generated by such devices. The County will use its best efforts to not allow advertising messages featuring services or products of Airline's competitors to be displayed in informational devices located within Airline's Preferential Use Gates.

(G) All Other Rights. Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to the County.

**Section 304 Prohibitions**

Airline shall not do, authorize to be done, or fail to do anything at the Airport which may: (i) create or contribute to a nuisance, (ii) in any way obstruct or interfere with rights of others using the Airport, or (iii) create a hazardous condition so as to increase the risks normally attendant upon operations permitted herein.

(A) Noise Abatement.

(1) Airline shall abide with all standards established for engine

run-up, engine maintenance, and noise abatement rules, regulations and procedures as set forth by Federal regulation, Milwaukee County Ordinance, and/or Airport policies developed for aircraft operations at the Airport.

(2) From time to time the County may adopt and enforce policies, rules and regulations with respect to noise abatement and use of the Airport not inconsistent with Federal law. Airline agrees to observe and to require its officers, agents, employees, contractors, and suppliers to observe and obey the same including compliance with the Airport's noise abatement policies and procedures, as promulgated or as amended from time to time. Airline agrees to observe and obey any and all such rules and regulations and all other applicable Federal, State and local rules and regulations.

(B) *Engine Runups.* Airline shall perform aircraft engine runups only at locations and during time periods approved by the Airport Director.

(C) *Disabled Aircraft.* Upon release from any applicable governmental authorities, Airline shall promptly remove any of its disabled aircraft from the Airfield Operations Area or Aircraft Parking Aprons, shall place any such disabled aircraft only in such storage areas as may be designated by the Airport Director, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by the Airport Director. If Airline fails to promptly remove its disabled aircraft from the Airfield Operations Area or Aircraft Parking Aprons, the Airport Director may remove said aircraft and take other reasonable and appropriate action under the circumstances, with no liability to County for any damages or any other results of taking such actions. The County shall add the cost of such removal or other action, plus actual administrative costs, including time and expenses, as an additional charge due hereunder on the first day of the month following the date of such work. The

County's rights under this Section are in addition to all other rights and remedies provided to the County hereunder.

(D) *Aircraft Apron Operations*: Airline shall abide by the following provisions:

(1) Airline shall operate in such a manner so as to insure the safety of persons and property on the aircraft apron.

(2) The Airport Director retains the right to review and approve all aircraft push-out, power-out, and/or power-back operating procedures at each Aircraft Parking Apron, which approval shall not be unreasonably delayed or denied.

### **Section 305 Airport Security**

Airline covenants and agrees that it will at all times maintain the integrity of the Airport Security Plan and 49 CFR Part 1500 et al. Should Airline, through a negligent act of its own, allow access to the Air Operations Area (AOA), Security Identification Display Area (SIDA), or Sterile Area to an unauthorized person or persons, and should County receive a civil penalty citation for Airline's breach of security, Airline agrees to reimburse County for any monetary civil penalty which may be imposed upon County by the Department of Homeland Security, the Transportation Security Administration (TSA), the Federal Aviation Administration (FAA), or any other federal, state, county, or local government authority resulting from said breach.

### **Section 306 Security and Special Provisions**

(A) Responsibility for Security of Leased Premises. Airline acknowledges and accepts full responsibility for the security and protection of the Leased Premises, any improvements thereon, its equipment and property on the Airport and control of access to the AOA through the Leased Premises by persons and vehicles. Airline fully understands and acknowledges that any security measures deemed necessary by Airline

for the protection of said Leased Premises, equipment and property and access to the AOA through the Leased Premises shall be the sole responsibility of Airline and shall involve no cost to County. Subject to restrictions imposed by applicable law, if any, all such security measures by Airline shall be in accordance with 49 CFR 1542 and the Airport Security Plan.

(B) Security Identification Display Area Access - Identification Badges.

Airline shall be responsible for requesting County to issue identification ("ID") badges to all employees who are authorized access to Security Identification Display Area ("SIDA") on the Airport, designated in the Airport's security program and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from Airport assignment or terminated from the employ of Airline or upon termination of this Agreement. Each employee must complete the SIDA training program conducted by County, before an ID badge is issued. Airline shall pay, or cause to be paid, to County such nondiscriminatory charges, as may be established from time to time, for lost or stolen ID badges and those not returned to County in accordance with this Agreement. Subject to any restrictions imposed by any applicable law, County shall have the right to require Airline to conduct background investigations and to furnish certain data on such employees before the issuance of such ID badges, which data may include the fingerprinting of employee applicants for such badges.

The privilege of unescorted access associated with a SIDA badge may be suspended or revoked for any violation of security rules, regulations, or policies. Additionally, monetary penalties may be assessed against any person for any violation of security rules or regulations including, but not limited to, Milwaukee County General Ordinance 4.02(8) as may be amended from time to time.



- (C) AOA-Driver Training. Before Airline shall permit any employee to operate a motor vehicle of any kind or type on the AOA, Airline shall require such employee to attend and successfully complete the AOA Driver Training Course conducted from time to time by County. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by County for any violation of AOA driving rules. Notwithstanding the above, Airline shall be responsible for ensuring that all such vehicle operators possess current, valid, appropriate state-issued driver's licenses.
- (D) Alcohol and Drug Testing. Airline acknowledges that County, as a public agency sponsor under the provisions of the Airport and Airway Improvement Act of 1982, as amended (the "Act"), has the obligation to establish a drug free workplace and to establish policies and programs to ensure airport safety and security. Airline acknowledges that County has the right to require users of the Airport (Airlines, Permittees, Licensees, etc.) to establish reasonable programs to further the achievement of the objectives described herein. Accordingly, Airline shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport who will as a part of their duties (a) be present on the AOA; (b) operate a motor vehicle of any type on the AOA; or (c) operate any equipment, motorized or not, on the AOA and for the same or similar screening based upon a reasonable suspicion that an employee, while on duty on the AOA, may be under the influence of alcohol or drugs. Notwithstanding the above, Airline specifically acknowledges that County has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person who it has a reasonable suspicion to believe is under the influence of alcohol or drugs.
- (E) Special Programs. Airline shall ensure that all employees participate in such safety, security and other training and instructional

programs, as County or appropriate Federal agencies may from time to time require.

- (F) Vehicle Permit and Company Identification. Motor vehicles and equipment of Airline operating on the AOA must have an official motor vehicle identification permit issued pursuant to Operational Directives of County. In addition, company identification must be conspicuously displayed thereon.
  
- (G) Federal Agencies Right to Consent. Airline understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies. Persons not approved or consented to by the Federal Inspection Services agencies shall not be employed by Airline in areas under the jurisdiction or control of such federal inspection agencies.
  
- (H) AOA, SIDA, Sterile Area Right to Search. Airline agrees that its personnel, vehicles, cargo, goods and other personal property are subject to being searched when attempting to enter or leave and while in the AOA, SIDA, or Sterile Area. Airline further agrees that it shall not authorize any employee or agent to enter the AOA, SIDA, or Sterile Area unless and until such employee has been issued an Airport ID badge or has received a Visitor's Badge where required, or is under the escort of an authorized Airport ID Badge holder.

It is further agreed that County has the right to prohibit an individual, agent or employee of Airline from entering the AOA, SIDA, or Sterile Area based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage or other unlawful activities. Any person denied access to the AOA, SIDA, or Sterile Area, or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before the

Airport Director or his authorized designee within a reasonable time. Prior to such hearing, the person denied access to the AOA, SIDA, or Sterile Area shall be advised, in writing, of the reasons for such denial.

Airline acknowledges and understands that these provisions are for the protection of all users of the AOA, SIDA, or Sterile Area and are intended to reduce the incidence of thefts, cargo tampering, aircraft sabotage and other unlawful activities at the Airport.

- (I) Right of Flight. There is hereby reserved to County, its successors and assigns, for the use and benefit of County and the public, a right of flight for the passage of aircraft in the air space above the surface of the premises herein leased, together with the right to cause in said air space 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 air space for landing at, taking off from or operating on the Airport.

**Section 307 Impact on Airport Certification**

Airline shall not knowingly do or permit its agents, directors, or employees to do anything at the Airport that would be in conflict or violate the requirements of Part 139 of the Federal Aviation Regulations, "Certification and Operations: Land Airports Serving Certain Air Carriers," as amended from time to time, or any successor regulation, order, or directive, or that would jeopardize the Airport's operating certificate obtained pursuant to such Federal regulations.

**Section 308 Airline Summary**

Upon request by the Airport Director, Airline shall provide to the County on a timely basis the following information and such additional information as the Airport Director may reasonably request from time to time:

The names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, facilities, public and media relations, and civic affairs, including a 24-hour emergency contact. Airline shall update information as needed.

**Section 309 Environmental Impairment and Hazardous Material Financial and Legal Responsibility**

(A) Definitions

- (1) "Hazardous Material" means any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation or ordinance or amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.), and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Wisconsin, or any political subdivision thereof; or (iv) the presence of which on the Leased Premises under this Agreement or other property owned or leased by County causes or threatens to cause a nuisance upon the Leased Premises or poses or threatens to pose a hazard to the Leased Premises or to the health or safety of persons on or about the Leased Premises; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenols (PCBs), asbestos or urea formaldehyde foam insulation.

- (2) "Environmental Requirements" means all applicable past, present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, the State of Wisconsin and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: (i) all requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials, or wastes, whether solid, liquid or gaseous in nature; and (ii) all requirements pertaining to the protection of the health and safety of employees or the public.
- (3) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), fees and expenses of defense of any claim and of any settlement or judgment, including without limitation attorneys' fees and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the Leased Premises or migrating or threatening to migrate to or from the Leased Premises, or the existence of a violation of Environmental Requirements pertaining to the Leased Premises including without limitation: (i) damages for personal injury, or injury to property or natural resources occurring upon or off the Leased Premises, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, interest and penalties, including, but not limited to, claims brought on behalf of employees of Airline or County; (ii)

diminution in the value of the Leased Premises, and damages for the loss of or restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Leased Premises; (iii) fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other fees incurred in connection with the investigation or remediation of such Hazardous Materials or violation ,of Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, containment, restoration or monitoring work required by any Federal, State or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Leased Premises or otherwise expended in connection with such conditions; (iv) liability to any third person or governmental agency to indemnify such person or agency for fees expended in connection with the items referenced in this Subparagraph.

(B) Representations and Warranties

- (1) With the exception of prior activities of Airline, if any, prior to execution of the lease Agreement involving Hazardous Materials or to the extent such activities have caused Environmental Damages, County hereby represents to Airline that, to the best of its knowledge, as of the date hereof, the Leased Premises are free of any adverse environmental conditions and that there are not Hazardous Materials upon, or beneath the Leased Premises.
  
- (2) County represents and warrants that it has all permits and licenses required to be issued to it by any governmental authority on account of any and all of its activities on the Leased Premises and other properties at the Airport, and that it is in full compliance with the terms and conditions of such permits and licenses. No change in the facts or circumstances reported or assumed in the application for or gathering of such

permits or licenses exists, and such permits and licenses are in full force and effect.

- (3) Any of the foregoing representations and all warranties as set forth in this Paragraph 309 shall survive the expiration or termination of this Agreement, and any transfer of County's interest in the Leased Premises or other properties adjacent thereto (whether by sale, foreclosure, deed in lieu of foreclosure or otherwise), except as to such representations and warranties as may be affected by any investigation by or on behalf of either party, by any information which either party may have or obtain with respect thereto, on the applicable statute of limitations.

(C) Financial and Legal Responsibility of County and Airline

(1) County's Financial and Legal Responsibility

- (a) Except for all activities of Airline with regard to the Leased Premises which created or could have created Environmental Damage, County shall, subject to any claim it may have against any other party, bear financial responsibility and legal liability for any and all Environmental Damages arising from the presence of Hazardous Materials upon or beneath the Leased Premises which are caused by County or which migrate thereto from any source (except from this Airline), or arising in any manner whatsoever out of the violation of any Environmental Requirements applicable to and enforceable against County, which pertain to the Leased Premises and activities thereon, during the term of the Agreement.

- (b) Without limiting the generality of the foregoing, the responsibility provided by this subparagraph shall also specifically cover costs incurred in connection with:

- (i) Except as identified in Paragraph 309 (B) (1), those Hazardous Materials present or reasonably suspected to be present in the soil, groundwater or soil vapor on or under the Leased Premises prior to Airline's initial and continuous occupancy of same;
  - (ii) Hazardous Materials that migrate, flow, percolate, diffuse, or in any way move onto the Leased Premises, including by way of discharge, dumping, or spilling, accidental or otherwise, either before or during the term of this Agreement, as a result of County's, its agent's, employee's, other airlines (except this Airline), and predecessors in interest's, invitee's, successor's and assign's intentional or negligent acts, omissions or willful misconduct; or
  - (iii) Compliance and participation as a co-permittee with Airport's State of Wisconsin Pollutant Discharge Elimination System (WPDES) storm water permit.
- (c) In no event will County bear financial responsibility or legal liability for Hazardous Materials present or Environmental Damage that is the result of any wrongful, intentional, or negligent act or omission, willful misconduct, direct or indirect acts of Airline or its agents, representatives, employees, contractors, subcontractors or invitees.
- (2) Airline's Financial and Legal Responsibility
- (a) Airline shall bear financial responsibility and legal liability for any and all Environmental Damages arising from the presence of Hazardous Materials upon or beneath the Leased Premises, caused by Airline, its agents, employees, or invitees, or arising in any other manner



whatsoever out of the violation of any Environmental Requirements applicable to and enforceable against Airline, which pertain to the Leased Premises and activities thereon, during the term of the Agreement, except as provided in subparagraph C. (1) ("County's Financial and Legal Responsibility") above, or arising in any other manner whatsoever out of the violation of any Environmental Requirements applicable to and enforceable against Airline or which pertain to the Leased Premises or activities thereon, during the term of the Agreement.

(b) Without limiting the generality of the foregoing, the responsibility provided by this subparagraph shall also specifically cover costs incurred in connection with:

(i) Those Hazardous Materials present or reasonably suspected to be present in the soil, groundwater or soil vapor on or under the Leased Premises after Airline's initial and continuous occupancy of same; or

(ii) Hazardous Materials that migrate, flow, percolate, diffuse, or in any way move from the Leased Premises to other areas within or adjacent to the Airport, including by way of discharge, dumping, or spilling, accidental or otherwise, during the term of this Agreement, as a result of Airline's, its agent's, employee's, in interest's, invitee's, successor's and assign's intentional or negligent acts, omissions or willful misconduct.

(c) In no event will Airline bear financial responsibility or legal liability for Hazardous Materials present or Environmental Damage that is the result of any wrongful, intentional, or negligent act or omission, willful

misconduct, direct or indirect acts of County or its agents, representatives, employees, contractors, subcontractors or invitees.

- (3) Such financial responsibility shall include, but not be limited to, the burden and expense of defending all suits and administrative proceedings and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against Airline or County and its partners and their respective directors, officers, shareholders, employees, legal successors, assigns, agents, contractors, subcontractors, experts, licensees and invites, and obligation to remediate as further described in Subparagraph D. Such financial responsibility shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Leased Premises or other properties adjacent thereto (whether by sale, foreclosure, deed in lieu of foreclosure or otherwise).

(D) Obligation to Remediate

- (1) Subject to and as a result of Paragraph C., County shall at its sole cost and expense, promptly take all actions required by any Federal, State, or local governmental agency or political subdivision or actions reasonably necessary to mitigate Environmental Damages or to allow full economic use of the Leased Premises consistent with the terms of this Agreement, arising from the presence upon, or beneath the Leased Premises, or other properties adjacent thereto subject to the jurisdiction of County, of a Hazardous Material or by failure to comply with Environmental Requirements, which were caused by County, its agents, employees, airlines (except Airline), predecessors in interest, contractors, invitees, successors, and assigns, except to the extent caused by Airline, and/or its directors, officers,

shareholders, employees, agents, contractors, subcontractors, experts, licensees and invites. This obligation to remediate shall include the offsite migration of Hazardous Materials onto the Leased Premises regardless of the cause, unless caused by Airline. County, in its performance of the above-described obligations, shall not unreasonably disrupt Airline's operations.

- (2) To the extent caused by Airline and/or its directors, officers, shareholders, employees, agents, contractors, subcontractors, experts, licensees and invites, Airline shall at its sole cost and expense, promptly take all actions required by any Federal, State, or local governmental agency or political subdivision or actions reasonably necessary to mitigate Environmental Damages or to allow full economic use of the Leased Premises or other areas within the Airport or adjacent thereto consistent with the terms of this Agreement, arising from the presence upon, or beneath the Leased Premises, of a Hazardous Material or by failure to comply with Environmental Requirements, and Airline shall promptly pay any fines, forfeiture or penalties occasioned thereby. This obligation to remediate shall include the offsite migration of Hazardous Materials onto other areas within the Airport or that are otherwise subject to the jurisdiction of County, which are caused by Airline.
  
- (3) Such actions shall include, but not be limited to, the investigation of the environmental condition of the Leased Premises and any such adjacent properties subject to the jurisdiction of County, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, monitoring or restoration work, whether on or off, said properties. County or Airline, as the case may be, shall take all reasonable actions necessary to restore the Leased Premises to the condition existing prior to the introduction of Hazardous Material upon, or beneath the

Leased Premises or such adjacent properties subject to the jurisdiction of County, notwithstanding any lesser standard or remediation allowable under applicable law or governmental practice or policies.

(E) Airline's Obligations and Requirements

(1) Airline hereby agrees and intends that it will likewise comply with and be bound to County by the same obligations and requirements by which County is bound to Airline as described in Paragraphs 309 (A) through (D) as if fully set forth herein. It is the intention of County and Airline to impose reciprocal duties, obligations, responsibility and requirements upon each other and accept same regarding financial and legal responsibility for Hazardous Materials, Environment Impairment and Damage except as otherwise provided herein.

(2) Ninety (90) days prior to the termination of this Agreement for any reason, whether by Lapse of Time or otherwise, Airline shall, at its sole cost and expense, provide a Phase I and/or Phase II (if required by County), Environmental Site Assessment (ESA) or its equivalent performed by a mutually agreed upon and acceptable consultant. In the event said ESA indicates a condition that is violative of any of the terms, conditions or covenants of this paragraph, Airline shall have the Obligation to Remediate as further described herein.

(F) Notification

If either Airline or County shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of County or Airline for Environmental Damages in connection with the Leased Premises or adjacent properties, or past or present activities of any person thereon, including, but not limited to, notice or other communication concerning any actual or threatened investigation,

inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction relating to same, then County or Airline shall deliver to the other party, within thirty (30) days of the receipt of such notice or communication, written notice of said violation, liability, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of either party to defend or otherwise respond to any such notification.

- (G) Airline shall submit a list of chemical substances used by Airline on the Leased Premises and supply a Hazard Communication Standard 29 CFR 1910.1200 Material Safety Data Sheet on each chemical substance to the Airport Fire Department upon request.

**ARTICLE IV: PREMISES**

**Section 401 General**

The County intends to maximize the utilization and flexibility of current Airport facilities to meet changing air service demands.

**Section 402 Airline Premises**

- (A) The County hereby leases to Airline, subject to the provisions of Article IV, the Airline Premises as shown on Exhibit(s) E. Airline accepts the Airline Premises in AS IS condition, with no warranties or representations, expressed or implied, oral or written, made by the County or any of its agents or representatives.
  
- (B) County, acting by and through the Airport Director, and Airline may, from time to time by mutual agreement, add to or delete space from Airline Premises, but it is the intent of the County not to delete a significant amount of leased airline space unless another tenant will immediately add substantially all of the space to its premises. Any such addition shall be subject to the rates and charges set forth in Article V hereof. In the event of any such addition or deletion, Exhibit E will be revised to reflect the resulting changes in Airline Premises.
  
- (C) County, acting by and through the Airport Director, shall advise Airline, in writing, if and when the Airline is found to be operating in space other than the Exclusive Use Premises or Preferential Use Premises and such space is not displayed on the Exhibit E. The Airline shall upon receipt of Airport Director's written Notice promptly (i.e., within seventy-two (72) hours) cease its use of any and all space not leased to the Airline. In the event Airline does not immediately cease its use of space the County shall immediately bill the Airline for the Airline's use of the additional space and, at its

option, may require the Airline to vacate the space within 30 days or execute an amendment to its lease for such additional space. Exhibit E shall be immediately revised to reflect the added space provided that additional space is not already leased to another tenant of the Airport.

(D) All space added to Airline Premises, pursuant to Section 402(B) and/or Section 402(C), will become Airline Premises and will be subject to all the terms, conditions, and other provisions of this Agreement and Airline shall pay to County all rentals, fees and charges applicable to such additional premises in accordance with the terms of this Agreement.

(E) Notwithstanding the above, Airline recognizes and agrees that from time to time the County's Capital Improvement Program may include Terminal Improvements which may include additions to or major renovations of the Terminal facilities. In order to facilitate the planned capital improvements, Airline agrees to cooperate with Airport's plan for the relocation of Airlines, as required. Airline further, agrees that County, at its option and upon one hundred and twenty (120) days written notice to Airline, may recapture the premises leased to Airline if said premises are required by County to implement its capital improvement program. In such event, County agrees to provide Airline with comparable facilities, which shall be substituted for Airline Premises in accordance with Paragraphs 402(B) and 402(C). The County further agrees to pay reasonable relocation expenses if and when the Airline is required to relocate.

**Section 403 Preferential Use Gates**

Gates are leased to the Airline on a preferential-use basis. Airline shall have a priority in using its Preferential Use Gates as follows:

(A) Airline's right to its Preferential Use Gates shall be subject to a

Gate utilization requirement of three and one-half (3.5) flight departures per day for each Gate assigned to Airline. For purposes of this Section, flight departures by Affiliates shall be counted towards Airline's Gate utilization requirement.

- (B) Airline shall have the right to permit the occasional use of any of its Preferential Use Gates by other airlines to accommodate non-routine operational anomalies. Such use shall not be considered a sublease arrangement.
- (C) If Airline fails to meet the Gate utilization requirement set forth in Subsection 403(A) as an average for each gate during the preceding twelve-month period, Airline may be subject to losing its preferential right to one or more Gates. If Airline is required by County to relinquish any Gate(s) in accordance with Subsection 403(D), such Gate(s) shall be deleted prospectively from Airline's Airline Premises and Airline's rent obligation with respect to such Gate(s) shall cease.
- (D) If County requires Airline to relinquish one or more of its Preferential Use Gates due to a need for the gate(s) as determined by the Airport Director, the Airport Director and Airline will confer to determine whether Gates should be relinquished, and if so, which Gates should be relinquished. If after 15 days of good faith negotiations no agreement is reached, the Airport Director shall select the Gate(s) to be relinquished. In making such selection, the Airport Director shall take into consideration the best interest of the traveling public and the operations of the Airport.
- (E) If there is no Event of Default with respect to Airline, the County shall pay all reasonable costs associated with the removal or relocation of Airline's equipment, fixtures, furniture, and signage from the relinquished Preferential Use Gate, and shall reimburse Airline for the undepreciated value of the tenant's improvements that cannot be relocated pursuant to the provisions of this Section;



provided, however, that in lieu of reimbursing the undepreciated value of Airline's tenant improvements, the County may replace such tenant improvements with like improvements. If Airline is under an Event of Default pursuant to, and has received Notice in accordance with, Section 1101, Airline shall remove or relocate its improvements at its sole cost and expense.

- (F) If Airline leases a preferential use gate but does not lease the operations areas below the gate, Airline will be required to allow access across Airline's Aircraft Parking Apron to others renting the operations areas below the gate.

**Section 404 Passenger Loading Bridges and Holdroom Equipment**

- (A) Airline shall have the right to use the County-owned passenger loading bridges and appurtenant equipment at Airline's Preferential Use Gates identified in Exhibit E and under the terms and conditions specified in Exhibit S.
- (B) If passenger loading bridges are not supplied by the County, Airline shall have the right to install and use its own passenger loading bridges and appurtenant equipment at its Preferential Use Gates.
- (C) Airline shall have the right to use the County-owned holdroom equipment at Airline's Preferential Use Gates identified in Exhibit E and under the terms and conditions specified in Exhibit T.
- (D) If holdroom equipment is not supplied by the County, Airline shall have the right to install and use its own holdroom equipment at its Preferential Use Gates.

**Section 405 Accommodation in Preferential Use Gates**

The Airport Director may grant Requesting Airline(s) the right of use in common all or a designated portion of Airline's Preferential Use Gates and rights of ingress and egress subject to and in accordance with the terms and conditions of this Agreement.

- (A) The Requesting Airline's right to use Airline's Preferential Use Gates (and associated Aircraft Parking Aprons, appurtenant equipment, and ticket counter positions which are reasonably necessary for the effective use of such Gates), shall be scheduled so as not to interfere with Airline's scheduled deplaning, enplaning, and servicing activities or those of any Affiliate, or any other airline that Airline services under any then-existing handling agreement. In accommodating Requesting Airline(s) in Airline's Preferential Use Gates, the Airport Director shall provide for departure not later than one hour before Airline's next scheduled arrival and for arrival not earlier than one hour after Airline's scheduled departure. Airline and its Affiliates shall have priority over other users with respect to overnight parking on Airline's assigned Aircraft Parking Aprons, provided that Airline and its Affiliates may be required to remove a parked aircraft from its Assigned Parking Positions during regular hours of operations to accommodate use by others in accordance with the provisions of this Article. Airline's off-schedule operations in its Preferential Use Gates shall take precedence over the use of a Requesting Airline; provided, however, that if Airline's off-schedule operations interfere with the Requesting Airline's use of Airline's Preferential Use Gates, Airline shall work with, and shall make best efforts to accommodate, Requesting Airline at another Gate.
- (B) When granted use of space under the provisions of Sections 405 and 406, Requesting Airlines shall have the right in all cases to ground-handle their own operations or to be handled by the operator of their choice, but may not interfere with Airline's equipment or operations.

- (C) The Airport Director shall require that the Requesting Airline enter into an agreement to pay Airline the Non-preferential Gate Use Fee established by County for the use of County-controlled facilities, and to indemnify the County and Airline in connection with the Requesting Airline's use of Airline's Preferential Use Gates and associated Aircraft Parking Aprons, and shall require the Requesting Airline to provide a payment guarantee and proof of insurance. The terms of the indemnification and the required insurance shall be those set out in Article X; provided, however, that Airline shall be named as an additional insured. The Airport Director may review and approve the agreement, which shall include reasonable fees based upon the rents and fees charged by Airport. Airline shall also have the right to charge a reasonable fee to the Requesting Airline for the use of Airline's capital equipment and to charge for use of utilities and other services being paid for by Airline.
- (D) In the event of dispute regarding the preferential Gate Use Fee, reasonable charges for the use of the Airline's proprietary systems and equipment or any other matter arising out of the accommodation of a requesting carrier under this Section and Section 406, and upon receipt by the Airport Director of written notice of the dispute, the Airport Director shall review available information regarding the dispute and in good faith and a non-discriminatory manner render a decision about the acceptable fee, charge or other matter regarding this Section or Section 406, which decision shall be binding on the Airline and the Requesting Airline.

**Section 406 Procedures for Accommodation in Preferential Use Gates**

- (A) If a Requesting Airline, including any airline seeking to expand its scheduled service or an airline seeking to begin scheduled service at the Airport, requests Gate space at the Airport, and such request cannot reasonably be met by use of Gates not leased to other Signatory

Airlines, the Airport Director on behalf of the Requesting Airline shall make a request of all Signatory Airlines leasing Preferential Use Gates for accommodation. The request shall be made to the person(s) designated to receive communications hereunder with a copy to the local station manager, and shall identify the need for such request. Airline shall make reasonable efforts to accommodate such request and shall provide a response to the Requesting Airline and the Airport Director within 15 days.

- (B) If no Signatory Airline volunteers to accommodate the Requesting Airline's requirements for Gate space at reasonable costs and on other reasonable terms, the Airport Director may, upon 30 days notification to Airline, grant the Requesting Airline the right of use in common with Airline one or more of Airline's Preferential Use Gates subject to the conditions contained herein. In making such determination, the Airport Director shall take into consideration the best interest of the traveling public and the operations of the Airport, and will be guided by all pertinent factors, including Airline's historical and then-present Gate utilization, the known planned use for such premises in the 180 days immediately after the request, the compatibility of such Requesting Airline's proposed operations and work force including ground-handling operations with Airline's and its Affiliates' operations and work force, and the security of Airline's and the Requesting Airline's operations. The Airport Director may request that planned uses and requirements be documented and submitted in writing to the Airport Director, but the Airport Director shall treat such planned uses and requirements as confidential, proprietary information, to the extent allowable by law.
- (C) The Requesting Airline shall have the right to make improvements and alterations necessitated by any required long-term accommodation, the scope of which shall be subject to approval by Airline and the Airport Director, which approval shall not be unreasonably withheld.

- (D) Upon the termination of such use in common with Airline, the Requesting Airline shall be responsible for returning all Gate and other facilities used by the Requesting Airline to the condition received, normal wear and tear excepted, and free of all waste and debris, unless Airline and the County release the Requesting Airline from this requirement.

**Section 407 Consolidation of Operation**

- (A) In the event that the County determines that it has a need for additional facilities and it reasonably determines that Airline is underutilizing its Airline Premises and is able to consolidate its operations without sacrificing its operational integrity (or that of its Affiliates or of those airlines under contract with Airline for ground-handling services that are being handled in the same facilities), the County may, upon consultation with Airline and after 30 days prior notice to Airline, recapture a portion of the Airline Premises and require Airline to consolidate its operations into its remaining Airline Premises.
- (B) For purposes of this Section, under-utilization shall be reasonably determined by the Airport Director, taking into account the average space utilization by all airlines at the Airport, Airline's space requirements to accommodate the standard operating procedures of Airline and its Affiliates, planned use by Airline for such premises in the next 180 days, seasonal variations, and any related labor agreements. The Airport Director shall report his findings to Airline through a Notice to Consolidate.
- (C) Through Notice to the Airport Director, Airline may request the Airport Director to reconsider his determination of under-utilization within 30 days of receipt of the Airport Director's Notice to Consolidate. In such event, Airline shall provide documentation to show future plans for service and other information requested by the

Airport Director. The Airport Director shall make a reasonable determination which he believes best meets his overall goals for the Airport.

- (D) If the Airport Director elects to proceed with the consolidation of space after such reconsideration, the Airport Director shall give Airline Notice within 10 days of such decision.
- (E) If there is no Event of Default with respect to Airline, the County shall pay all reasonable costs associated with the relocation of Airline's equipment, fixtures, furniture, and signage, and shall reimburse Airline for the undepreciated value of the tenant's improvements that cannot be relocated pursuant to the provisions of this Section; provided, however, that in lieu of reimbursing the undepreciated value of Airline's tenant improvements, the County may replace such tenant improvements with like improvements in the consolidated space. If Airline is under an Event of Default pursuant to, and has received Notice in accordance with, Section 1101, Airline shall consolidate into its remaining Airline Premises at its sole cost and expense.

**Section 408 Relinquishment of Abandoned Premises**

If the Airport Director reasonably determines that Airline has abandoned or constructively abandoned all or a portion of its Airline Premises, the County may, but is not obligated to, upon 30 days Notice to Airline, terminate this Agreement with respect to, and delete from Airline's Airline Premises hereunder, such abandoned or constructively abandoned space. For purposes of this Section, abandoned or constructively abandoned space shall be determined by the County in its sole discretion but taking into account planned use by Airline for such premises in the following 180 days and normal seasonal variations. Airline may request the County to reconsider its determination of abandonment by giving Notice to the County. In such event, Airline shall provide documentation to show future plans for service, events

of *force majeure*, if any, and other information requested by the County. The County shall make the determination that it believes best meets its overall goals for the Airport.

**Section 409 Relocation of Airline Premises**

In order to optimize use of Airport facilities, the County reserves the right to reassign any or all of Airline's Airline Premises after Notice, followed by a consultation period of no less than 90 days. In making such determination, the Airport Director shall take into consideration the best interests of the traveling public and the operations of the Airport, and will be guided by all pertinent factors, including Airline's historical and then-present space utilization, the known planned use for such premises, and Airline's operational space adjacencies. If any such reassignment occurs, Airline shall be assigned space reasonably comparable in size, quality, finish, and location. Airline's costs shall not increase as a result of any relocation unless Airline requests additional space and/or replacement space in a different Cost Center. Airline's relocation of any of its Airline Premises resulting from such reassignment shall be at the County's sole expense. Airline shall be reimbursed for its reasonable out-of-pocket expenses incurred as part of the relocation and for the undepreciated value of its tenant improvements that cannot be relocated; provided, however, that in lieu of reimbursing the undepreciated value of Airline's tenant improvements; the County may replace such tenant improvements with like improvements in the new space.

**Section 410 Parking Space**

Vehicular parking spaces, adequate and reasonably convenient to the Public Terminal Building, shall be made available by County in accordance with the Airport Parking Information and Rules at locations selected and designated by the Airport Director, where it will not interfere with operations at the Airport, for the use of Airline and its employees in common with other air carrier or air transportation companies having leases similar to this

Agreement. County reserves the right to make reasonable charge to Airline for such parking privileges. County agrees that charges will only be levied during such periods that all airport terminal tenants and concessionaires are charged for employee parking.



**ARTICLE V: RENTS, FEES AND CHARGES**

In consideration for the rights and privileges available to Airline in accordance with provision of this Agreement, Airline agrees to pay all applicable rents, fees and charges.

**Section 501 Terminal Building Rents**

- (A) Airline shall pay the County for the use of its Exclusive Use Premises and Preferential Use Premises a monthly rent equal to the applicable Terminal Rental Rates calculated in accordance with Section 603 multiplied by the amount of space in Airline's Exclusive Use Premises and Preferential Use Premises set forth in Section 402.
  
- (B) Airline shall pay the County for the use of Common Use Premises a monthly rent based on the Terminal Rental Rates calculated in accordance with Section 603, as follows:
  - (1) Common Use space shall be multiplied by the appropriate annual square foot rate calculated in accordance Section 603. Twenty percent (20%) of the total monthly amount calculated shall be divided equally among all Signatory Airlines using the Common Use Premises.
  
  - (2) Eighty percent (80%) of the total monthly amount calculated for each category and area shall be prorated among all Signatory Airlines using the Common Use Premises based on the ratio of each such Signatory Airline's Originating Passengers (including their Affiliates) during the calendar month for which such charges are being determined, to the total of all Originating Passengers during said calendar month.

(3) Non-Signatory Airlines shall pay a fee per Originating Passenger established by County based upon 125% of the estimated total annual cost of the Common Use Premises divided by the estimated total annual Originating Passengers. The estimated Non-Signatory Airline common use charges shall be deducted from the common use requirement for the Signatory Airlines.

(C) Airline shall pay the County for the use of Joint Use Premises a monthly rent based on the Terminal Rental Rates calculated in accordance with Section 603, as follows: Airline's monthly share of rent for the Joint Use Premises shall be calculated by the ratio of the number of its ticket counter positions divided by the total number of ticket counter positions serving the Joint Use baggage make-up area.

**Section 502 Landing Fee Charges**

Airline shall pay to County landing fee charges for Revenue Landings for the preceding month at the rate and in the amount calculated in accordance with Section 605.

**Section 503 Passenger Loading Bridge Charges**

Airlines shall pay the County a monthly use fee equal to the applicable fee calculated in accordance with Section 604 multiplied by the number of County- owned passenger loading bridges in use by the Airline.

**Section 504 Aircraft Parking Apron Fees**

Airline shall pay the County for the use of its Apron area a monthly rent equal to the Rate calculated in accordance with Section 607 multiplied by Airline's total amount of linear feet of apron area in accordance with Exhibit Q.

**Section 505 O&M Charges for Joint Use Facilities**

It is further understood and agreed by and between the parties that in addition to the rentals, fees, and charges hereinabove referred to, Airline, together with other Signatory Airlines occupying the Joint Use baggage makeup areas and leased ticket counter areas including all conveyor systems and walkways, will pay actual operating and maintenance costs for the Outbound Baggage Handling System (OBHS) owned and installed by County in the shared baggage make-up area. Said maintenance and operating costs shall include labor and related overhead charges as are necessary to provide maintenance on the units.

**Section 506 Fees and Charges for Parking of Aircraft and Use of Other Facilities of County**

County may, at County's option, designate alternate parking areas for Airline's aircraft other than Aircraft Parking Apron referred to in Section 106. For the parking of aircraft on such parking areas, Airline shall pay to County such amounts as shall be set forth in a fee schedule to be established by County by ordinance and as same may be amended from time to time. In addition to the rentals, fees, and charges, Airline will, for the use of other facilities of County, including the International Arrivals Building, pay such fees or charge as County shall set forth in the ordinance.

**Section 507 Other Fees and Charges**

Airline shall pay all other charges which are assessed by County for the use of other Airport facilities or for services that may be provided by County to Airline from time to time, including employee parking (as described in Section 410) and issuance of security identification badges.

**Section 508    Security Deposit**

(A) *Amount and Form of Security Deposit.* As security for payment of the fees, rates and charges described herein, each new entrant carrier or air transportation company shall provide a deposit in the form of a check to be negotiated or an irrevocable letter of credit prior to said carrier or air transportation company commencing service at the Airport. Said security deposit is to be in an amount equal to three (3) months of the new entrant's projected activity covering applicable fees, rates and charges due for items (a), (b), (c), and (d) below. Said security deposit shall be deposited in the account of the Airport and returned to air carrier or air transportation company without interest after submission of evidence satisfactory to the Airport Director that all fees, rates and charges have been paid in full upon termination of the above referenced service or upon timely payment of County invoices for two (2) years.

- (1) Exclusive Use Premises
- (2) Preferential Use Premises
- (3) Joint Use Premises
- (4) Landing fees

(B) *Term of Security Deposit.* Airline shall maintain the Security Deposit until either (a) the completion of the year-end adjustment in accordance with Section 610 following the expiration or early termination of this Agreement or the cessation of service to Airport by Airline or (b) the completion of the two-year period established in Subsection (A) if Airline continues to serve the Airport. Airline shall provide at least sixty (60) days prior notice of the date on which any Security Deposit expires or is subject to cancellation.

(C) *County's Right to Use Security Deposit; Replenishment.* If Airline commits or is under an Event of Default pursuant to Section 1101, the County shall have the right to use the amounts of such Security

Deposit to pay Airline's rents, fees, and charges, PFC remittances, or any other amounts owed to the County by Airline then due and payable, or to apply the proceeds to any cost or expense or material damages incurred by the County as a result of Airline's default, or Event of Default under Section 1101. If any such Security Deposit, or portion thereof, is used as stated in this Subsection, Airline shall replenish or provide a renewal or replacement Security Deposit up to the full amount set forth in Subsection 508(A) within 10 days of being notified to do so by the County. The County's rights under this Section shall be in addition to all other rights and remedies provided to the County hereunder.

(D) *Waiver of Security Deposit Requirement.* Notwithstanding the provisions of Subsections 508(A)-(C), the County may waive the Security Deposit obligation if it determines that Airline qualifies for relief from such obligation. To qualify for such relief, Airline must:

- (1) not be under an Event of Default pursuant to Section 1101, and not have received Notice in accordance with Section 1101 of such Event of Default;
- (2) have provided regularly scheduled service to the Airport during the prior 24 consecutive months; and
- (3) have made timely payments of all applicable rents, fees, and charges during such 24 month period.

Any Airline that was a Signatory Airline under the terms of the Airline Lease terminating on September 30, 2010 shall be exempt from subparagraphs (A) through (C) of this Section 508 until July 1, 2011.

If, after having waived the Security Deposit obligation in accordance with this subsection, the County determines that Airline has not continued to satisfy the requirements for relief under this subsection

(D), or if Airline commits or is under an Event of Default pursuant to Section 1101, has received Notice in accordance with Section 1101 of such Event of Default and has failed to cure such Event of Default, Airline shall immediately provide a Security Deposit in accordance with the provisions of Subsection 508(A). The provisions of this Subsection shall be inapplicable during any holdover period as described in Section 203.

**Section 509 Statistical Report**

(A) Airline shall complete and submit to the County no later than the 10<sup>th</sup> day of each month, an Operator's Monthly Report and a Monthly Report of Actual Aircraft Landings attached hereto as Exhibits H and I, summarizing statistics and information for Airline's prior month of operations at the Airport necessary for the computation of rents, fees, and charges established hereunder, and such other statistical and financial data that the County determines is necessary for the computation and administration of Airline's financial obligations hereunder, including the following data:

- 1) total number of flight departures at each gate assigned to Airline;
- 2) total number of originating and connecting passengers;
- 3) total number of domestic enplaned and deplaned passengers;
- 4) total number of international enplaned and deplaned passengers;
- 5) total number of landings by type of aircraft and Maximum Gross Certificated Landed Weight by type of aircraft;
- 6) total pounds of air cargo enplaned and deplaned;
- 7) total pounds of air mail enplaned and deplaned; and
- 8) total amount of food and beverage purchased to be sold, if any, in accordance with the provisions of Subsection 301(Q).

The information submitted by Airline to County pursuant to this Subsection shall be in addition to any other information required

elsewhere in this Agreement to be submitted by Airline.

- (B) The County shall have the right to rely on said activity reports in determining rents, fees, and charges due hereunder. Airline shall have full responsibility for the accuracy of said reports. Late payment and payment deficiencies due to incomplete or inaccurate activity reports shall be subject to the late payment and late penalty charges as set forth in Subsection 511(E).
- (C) The acceptance by the County of any Airline payment shall not preclude the County from verifying the accuracy of Airline's reports or computations, or from recovering any additional payment actually due from Airline. Interest on any additional amount due shall accrue from the date the payment was originally due, at the rate prescribed as calculated in Subsection 511(E).
- (D) Penalty for Late Report. In the event that Airline fails to deliver the required statistical report on time, Airline shall incur and pay a service fee of ONE HUNDRED DOLLARS PER DAY beginning with the day after the due date.

**Section 510 Airline Records and Audit**

- (A) Airline shall maintain books, records, and accounts, including computerized records, relevant to the determination and payment of any rents, fees, and charges, PFC remittals, and other payments due to the County in accordance with this Agreement including: records of its aircraft arrivals and departures; gate utilization; originating and connecting, enplaned and deplaned, domestic and international passengers; aircraft landings; enplaned and deplaned air cargo and mail; food and beverage purchased for resale; and sublease and subcontracted services arrangements at the Airport. Each such item of information shall be maintained for a period of at least four (4) years following the expiration or early termination of this Agreement, and longer if necessary for pending litigation. Airline may maintain

such books, records and accounts at its corporate offices, but shall make such material available at the Airport upon fifteen (15) days notice. Notwithstanding anything to the contrary contained herein, nothing herein is intended to require, or shall have the effect of requiring, Airline to maintain or allow inspection of any books and records pertaining to PFCs other than those required by applicable all laws and regulations.

- (B) The County and such persons as may be designated by it, including its auditors and financial consultants, shall have the right, during normal business hours, with ten (10) days notice to Airline, to examine, audit, and make copies of such books, records, and accounts, including computerized records. Except as otherwise provided, the cost of such examination or audit shall be borne by the County; provided, however, that the cost of such audit shall be reimbursed to the County by Airline if: (i) the audit reveals an underpayment by Airline of at least 5% for rents, fees and charges, PFC remittance, or other payment payable by Airline hereunder for any Calendar Year, as determined by such audit, or (ii) Airline has failed to maintain accurate and complete books, records, and accounts in accordance with this Section.
- (C) If Airline fails to maintain true and complete books, records, and accounts resulting in an underpayment of rents, fees, and charges by Airline to the County, the County may recalculate the total amount of rents, fees, and charges, PFC remittances, or other payments due to the County by Airline in accordance with this Agreement. In such case Airline shall remit to the County within 15 days of receipt of a demand or invoice from the County the delinquent amount plus interest, fees and charges as provided for in Subsection 511(E).

**Section 511 Payment Provisions**

- (A) *Terminal Building Rents and Passenger Loading Bridge Charges.* Terminal Building rents for the use of the Leased Premises, including Passenger



Loading Bridge Charges shall be due and payable on the first day of each month in advance without invoice from the County.

- (B) *Landing Fees.* Landing fees for the preceding month shall be due and payable 20 days after the date of invoice.
- (C) *Other Fees.* All other rents, fees, and charges required hereunder shall be due and payable within 20 days of the date of the invoice.
- (D) *Form of Payment.* Airline shall pay all sums due hereunder in lawful money of the United States of America, without deduction or setoff, by wire transfer or check made payable to the Milwaukee County Airport Division, which check shall be delivered postage or other charges prepaid to:

By U.S. Mail: Milwaukee County Airport Division  
P.O. Box 78979  
Milwaukee, WI 53278-0979

By Express Mail: Milwaukee County Airport Division  
5300 South Howell Avenue  
Milwaukee, WI 53207-6189

By Wire Transfer: Routing Number: 075000022  
Bank Name: U.S. Bank Milwaukee  
Account Title: GMIA Operations

or as hereafter the County may designate by Notice to Airline.

- (E) *Interest Charges and Late Charges on Overdue Payment.*
  - (1) Interest. Unless waived by the County Board, air carriers and air transportation companies shall be responsible for payment of interest on amounts not remitted in accordance with the requirements of this section. The rate of interest shall be the statutory rate in effect for delinquent county property taxes (presently one (1) percent per month or fraction of a month) as described in s. 74.80(1), Wis. Stats. The obligation or payment

and calculation thereof shall commence upon the day following the due dates established herein.

(2) Penalty. In addition to the interest described above, air carriers and air transportation companies shall be responsible for payment of penalty on amounts not remitted in accordance with the terms of this section. Said penalty shall be the statutory rate in effect for delinquent county property taxes (presently five-tenths (0.5) percent per month or fraction of a month) as described in section 6.06(1) of the Code and s. 74.80(2), Wis. Stats. The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

(F) *Dishonored Check or Draft.* In the event that Airline delivers a dishonored check or draft to County in payment of any obligation arising under the terms of this Agreement, Airline shall incur and pay a service fee of: ONE HUNDRED TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less; ONE HUNDRED THIRTY DOLLARS, if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00; or ONE HUNDRED FORTY DOLLARS, if the face value of the dishonored check or draft is \$300.00 or more; or Five Percent of the face value of such dishonored check or draft, whichever is greater. Further, in such event, County may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to County.

**Section 512 No Other Rents, Fees, and Charges**

(A) County agrees that, other than as provided for or contemplated by other provisions of this Agreement, or as hereafter authorized or directed by federal or state statutes, no charges, fees, licenses, excise or operating taxes or tolls shall be charged or collected by it, directly or indirectly, from the Airline or its passengers, suppliers of materials, or furnishers of services for the uses

authorized under Article III of this Agreement.

(B) The provisions contained in Subsection 512(A) shall not preclude the County from:

- (1) imposing fees and charges for the use of specified equipment or facilities at the Airport;
- (2) imposing fines, penalties, or assessments for the enforcement of the County's Rules and Regulations;
- (3) charging persons other than the Airline fees or charges for the privilege of operating concessions for the public or selling products or furnishing services upon the Airport or for any other purpose provided for or authorized herein;
- (4) seeking reimbursement from Airline for the cost of services provided to Airline in compliance with, or fines for lack of Airline compliance with, any federal, state, or local law, rule, or regulation which is enacted or amended subsequent to execution of this Agreement;
- (5) assessing and collecting PFCs as allowed by federal law;
- (6) imposing guarantee payments in accordance with Section 508;
- (7) imposing any charges resulting from year-end adjustments in accordance with Section 610;
- (8) imposing charges for any services or facilities provided subsequent to the execution of this Agreement, the cost of which is not included in the calculation of rents, fees, and charges;
- (9) Seeking reimbursement from Airline for the cost of repairing any damages caused by Airline, its employees or invitees; or

(10) Assessing late fees, penalties and interest as provided herein.

**Section 513 Security Interests**

- (A) All PFCs collected by Airline for the benefit of the County that are in the possession or control of Airline are to be held in trust by Airline on behalf and for the benefit of the County. To the extent that Airline holds any property interest in such PFCs, and notwithstanding that Airline may have commingled such PFCs with other funds, Airline hereby pledges to the County and grants the County a first priority security interest in such PFCs, and in any and all accounts into which such PFCs are deposited to the extent of the total amount of such PFCs (net of the airline compensation amounts allowable in accordance with 14 C.F.R. §158.53) held in such accounts.
- (B) As a guarantee by Airline for the payment of all rents, fees, and charges, and all PFC remittances due to the County, Airline hereby pledges to the County and grants the County a security interest in all of its leasehold improvements and fixtures located on or used by Airline at the Airport.

**Section 514 Airline as Guarantor of Its Affiliates**

Airline hereby unconditionally guarantees all rents, landing fees and all PFC remittances of any of its Affiliates accrued during the period of such designation, to the extent that such Affiliate's operations at the Airport were performed for the benefit or in the name of Airline. Upon receipt of Notice of default by any such Affiliate from County due to nonpayment of such rents, landing fees or PFC remittances, Airline shall pay all amounts owed to the County on demand in accordance with the payment provisions of this Agreement.

**Section 515 Commitment of Airport Revenues**

County hereby covenants and agrees that insofar as legally permitted to do so under federal and state law and the Bond Resolution, all revenues and receipts from rents, fees, charges, or income from any source received or accruing to the Airport System shall be used exclusively by County for Airport System purposes as contemplated herein.

**Section 516 County's Accounting**

- (A) County covenants that in keeping its books of account and allocating revenues and expenses, it will observe sound, generally accepted accounting principles, consistently applied and including only those costs in the system of accounts directly attributable to the Airport System, on the basis of sound business principles for effective and prudent control of expenses for Airport System operation, maintenance, and administration.
  
- (B) County further covenants that it:
  - (1) shall not, in computing costs, charge to the Airport System any interest on advances or loans made from County's resources other than borrowings by County, including without limitations any Bonds issued by or on behalf of the County, the proceeds of which are used to finance improvements at the Airport, and, in such instances, the interest charged shall be the interest paid by County on such borrowing; and
  
  - (2) shall not include return on investment or interest on the Airport System land as an expense in the Airline rate base.

**Section 517 Capital Improvement Reserve Fund**

During the term of this Agreement, County shall continue to maintain a

Capital Improvement Reserve Fund as established in Article V of the Bond Resolution. This Fund was initially funded in 1985 by the County. The fund balance in the Capital Improvement Reserve Fund on the Commencement Date shall be retained in such Fund, subject to permissible withdrawals and replenishments. The annual contributions are to be equal to (a) depreciation payments for existing Airport improvements, (b) the amortization charges on new Capital Improvement Projects or Major Maintenance Projects - Capitalized or portions thereof paid for from the Capital Improvement Reserve Fund, and (c) income received from the investment of monies in such Fund. Such Fund shall be used, as appropriations permit, to finance (a) future Capital Improvements or Major Maintenance Projects - Capitalized or portions thereof at the Airport or at Timmerman Airport, (b) new or replacement equipment included in the Airport's operating budget, (c) County contributions for federal or state-funded projects, or (d) for any other Airport System purpose. It is the intent of the parties that any monies expended for (a), (b) or (c) from the Capital Improvement Reserve Fund shall be amortized or depreciated over the useful life of the asset at the Cost of Capital with the amortization or depreciation charges deposited into such Fund.

**Section 518 Airport Development Fund Account (ADFA)**

County shall establish an Airport Development Fund Account (the "ADFA") during the term of this Agreement, which shall be a special, segregated account maintained in the Surplus Fund, and shall be subject to the terms and provisions of the Bond Resolution. The annual contributions to the ADFA are to be equal to (a) ten percent (10%) of Airport Concession Revenues identified in Section 603 (B) and (b) income received from the investment of monies in the ADFA. Such ADFA shall be used by the Airport Director, as appropriations permit, to finance (a) future Capital Improvements or Major Maintenance Projects - Capitalized or portions thereof at the Airport or at Timmerman Airport, or (b) for any other Airport System purpose permitted by, and subject to, the permitted uses of the Surplus Fund under the terms and provisions of the Bond Resolution. The monies on deposit in the ADFA, like other monies on deposit in the Surplus Fund, are subject to the terms and

provisions of the Bond Resolution which may require use of such monies in the ADFA to fund deficiencies in the other funds and accounts established and held under the Bond Resolution. The County Accounting System will not include depreciation or amortization in airline rates, fees and charges for those portions of improvements paid for by monies from the Airport Development Fund Account, from federal or state grants or from Passenger Facility Charges specifically provided for that purpose or for the cost of those projects that are paid for by other parties.

The maximum amount that may be held in the Airport Development Fund Account from time to time is \$15,000,000; provided, that if amounts on deposit in the ADFA are less than \$15,000,000 at any time, deposits will continue to be made to the ADFA. If at the end of any Calendar Year the amount of cash in the Airport Development Fund Account exceeds \$15,000,000, such excess amount shall be transferred to the Operation and Maintenance Fund and will be refunded by check written from the Operation and Maintenance Fund as an Operation and Maintenance Expense within 60 days following the completion of the year-end settlement calculation. Each Signatory Airline shall receive a share of the excess amount in proportion to the total amount that they paid in Terminal Building Rents during that Calendar Year.

Notwithstanding anything herein to the contrary, during the term of this Agreement the County may transfer up to \$4,000,000 from the ADFA to the ADF Depreciation Account established pursuant to Section 520 of this Agreement.

**Section 519 Special Project Capital Improvement Account (SPCIA)**

Any funds in the Special Project Capital Improvement Account on September 30, 2010 (which funds represent depreciation payments on facilities at Timmerman Airport under prior airline leases) will be transferred to the Capital Improvement Reserve Fund as contemplated by and in accordance with the Bond Resolution, and the SPCIA will be closed.

**Section 520    ADF Depreciation Account**

County shall establish an ADF Depreciation Account during the term of this Agreement, which shall be a special, segregated account in the Surplus Fund, and shall be subject to the terms and provisions of the Bond Resolution. Such ADF Depreciation Account shall be used by the Airport Director, as appropriations permit, to finance (a) future Capital Improvements or Major Maintenance Projects - Capitalized or portions thereof at the Airport or at Timmerman Airport, or (b) for any other Airport System purpose permitted by, and subject to, the permitted use of the Surplus Fund under the terms and provisions of the Bond Resolution. The monies on deposit in the ADF Depreciation Account, like other monies on deposit in the Surplus Fund, are subject to the terms and provisions of the Bond Resolution which may require use of such monies in the ADF Depreciation Account to fund deficiencies in the other funds and accounts established and held under the Bond Resolution. Notwithstanding anything herein to the contrary, during the term of the agreement the County may expend up to \$4,000,000 from the ADF Depreciation Account and include depreciation or amortization in airline rates, fees and charges resulting from these expenditures. The depreciation or amortization charges will be credited to the ADF Depreciation Account.



**ARTICLE VI: CALCULATION OF RENTALS, FEES AND CHARGES**

**Section 601 General**

Effective January 1, 2011 and each Calendar Year thereafter during the term of this Agreement, rents, fees, and charges shall be calculated based on the principles and procedures set forth in this Article. The methodology for the calculation of rents, fees, and charges is described in this Article. The rents, fees, and charges for the period October 1, 2010 through December 31, 2010 shall be calculated based upon the principles and procedures contained in the existing airline lease with a term ending September 30, 2010.

In addition, for and in consideration of County's ongoing costs and expense in constructing, developing, equipping, operating and maintaining the Airport System, the Airline, notwithstanding any provision contained elsewhere in this Agreement, agrees to pay County rates, fees and charges as will enable County, after taking into account revenues derived from other users of the Airport System, to pay the principal of and interest on all Outstanding Bonds now or hereafter issued, to meet any debt service coverage requirements related to such Outstanding Bonds and to fund the funds and accounts established with respect to Outstanding Bonds and, specifically, to make the required deposits in each Fiscal Year into the Operation and Maintenance Fund, the Special Redemption Fund, the General Obligation Bond Fund, the Operation and Maintenance Reserve Fund, the Coverage Fund, and the Capital Improvement Reserve Fund (all as defined and described in the Bond Resolution). Without limiting the generality of the foregoing, it is understood and agreed that in order to facilitate compliance with the terms of the Bond Resolution, the County may, under this agreement, impose and collect rates, rentals, fees and charges sufficient so that in each fiscal year its Net Revenues including Other Available Funds will be at least equal to 125% of Debt Service on all Bonds outstanding including, without duplication, any Credit Facility Obligations (capitalized terms being used with the meaning assigned to them in the Bond Resolution).

During each Calendar Year the County shall allocate to each applicable Cost Center the debt service on outstanding Bonds as shown in Exhibit L. Also, during each Calendar Year the County shall allocate direct and indirect Operation and Maintenance Expenses to each applicable Cost Center using the methodology described in Exhibit M.

**Section 602 Coordination Process**

- (A) By May 15 of each year and upon request, Airline shall provide County with an estimate of the total maximum certificated gross landed weight of all aircraft expected to be landed at the Airport by Airline and each of its Affiliates during the following Calendar Year. If Airline has not provided the County with the estimate of total landed weight for the following Calendar Year by June 1, the County shall provide its own estimate of landed weight by using the total landed weight for the Airline and its Affiliates from the previous Calendar Year and the current year.
  
- B) By August 1 of each year, the County shall present to the AAAC the Airport's Operation and Maintenance and Capital Improvement budgets and the County's preliminary calculation of rent, fees, and charges for the following Calendar Year.
  
- (C) On or about August 1 of each year, the County shall convene a meeting with the AAAC to review and discuss the County's preliminary calculation of rents, fees, and charges for the following Calendar Year. The County shall give due consideration to the comments and suggestions made by the AAAC representatives pertaining to the Operation and Maintenance and Capital Improvement budgets and the preliminary rents, fees and charges. The County shall prepare a final calculation of rents, fees, and charges for the following Calendar Year, and will make its best efforts to provide a copy to Airline no later than the last business day of the month preceding the start of the new Calendar Year. Notwithstanding anything else to the contrary,

the County's final calculation of rents, fees, and charges shall take effect on the first day of each Calendar Year.

**Section 603 Terminal Rental Rates**

The rental rates for the Airport Terminal Building shall be calculated as shown on Exhibit N.

- (A) The total costs attributable to the Terminal Cost Center shall be calculated by adding together the following:
- (1) direct and indirect Operation and Maintenance Expenses, any required deposits to the O&M Reserve Fund, and Major Maintenance Projects - Expensed allocable to the Terminal Cost Center;
  - (2) total debt service charged for Major Maintenance Projects - Capitalized and Capital Improvements financed with Bonds and allocable to the Terminal Cost Center put into service on or before the end of the following Calendar Year;
  - (3) depreciation on land improvements, buildings and structures allocable to the Terminal Cost Center;
  - (4) amortization of Major Maintenance Projects - Capitalized and Capital Improvements financed with Capital Improvement Reserve Fund funds allocable to the Terminal Cost Center that have been or will be placed in service prior to the end of the following Calendar Year;
  - (5) any required deposits to the Debt Service Coverage Fund resulting from the issuance of Additional Bonds allocable to the Terminal Cost Center; and
  - (6) any replenishment of the Debt Service Reserve Fund, and other

reserve or restricted purpose funds allocable to the Terminal Cost Center, as may be required by the Bond Resolution.

(B) The net "Terminal Requirement" shall then be calculated by subtracting from the total costs of the Terminal Cost Center ninety percent (90%) of the income from a number of Airport Concession Revenue accounts including, but not limited to:

- 1) Public Parking Fees
- 2) Car rental concession fees (not including Customer Facility Charges)
- 3) Gifts, Souvenirs & Novelty Fees
- 4) Restaurant Concession Fees
- 5) Catering Fees
- 6) Displays Concessions Fees
- 7) Public Transportation Concession Fees
- 8) Golf Driving Range Concession Fees
- 9) Bank Commissions

(C) The net "Terminal Requirement" shall then be further calculated by subtracting one hundred percent (100%) of the income from all other terminal cost center revenue accounts not itemized above.

(D) The annual Airport Terminal Building Rental Rates shall then be calculated by dividing the net Terminal Requirement calculated in accordance with Subsections 603(A)-(C) by the sum of (a) the total number of square feet rented by the airlines that is Airline Public Space plus (b) seventy-five percent (75%) of the number of square feet rented by the airlines that is Airline Non-Public Space in the Airport Terminal Building. The rental rate for Airline Non-Public Space shall be seventy-five percent (75%) of the rental rate for Airline Public Space. The respective monthly Terminal Rental Rates shall be 1/12 of the annual Terminal Rental Rates.

(E) Notwithstanding the calculation methodology described above, the minimum terminal building rental rate for Airline Public Space established at the beginning of each year during the term of the Agreement shall be ten dollars (\$10.00) per square foot and for Airline Non-Public Space shall be seven dollars and fifty cents (\$7.50) per square foot. Notwithstanding these minimum billing rates, the year-end adjustment and settlement process described in Section 610 shall apply to the Terminal Cost Center.

**Section 604 Passenger Loading Bridge Charges**

Until the acquisition by the County of a majority of the airline-owned passenger loading bridges, estimated to occur in 2012, the County will continue to charge for the use of County-owned passenger loading bridges with the rate set by ordinance. Following the acquisition of the majority of the airline-owned passenger loading bridges, the Passenger Loading Bridge Charge applicable to Section 503, shall be computed as shown in Exhibit O and is described as follows:

- (A) The total cost of the Passenger Loading Bridges Cost Center shall be calculated by adding together the following:
- (1) direct and indirect Operation and Maintenance Expenses, any required deposits to the O&M Reserve Fund, and Major Maintenance Projects - Expensed, if any, allocable to the Passenger Loading Bridges Cost Center;
  - (2) amortization of Major Maintenance Projects - Capitalized and Capital Improvements allocable to the Passenger Loading Bridges Cost Center and financed with Airport Capital Improvement Fund funds that have been or will be placed in service prior to the end of the following Calendar Year;
  - (3) total debt service charged for Major Maintenance Projects -

Capitalized and Capital Improvements allocable to the Loading Bridges and financed with bond proceeds that have been or will be placed into service on or before the end of the following Calendar Year; and

- (4) any replenishment of the Debt Service Reserve Account, and other reserve or restricted purpose funds allocable to Loading Bridge, as may be required by the Bond Resolution.
- (B) The annual Passenger Loading Bridge Charge applicable to each County-owned passenger loading bridge shall be calculated by dividing the total cost and charges allocable to the Passenger Loading Bridges Cost Center in accordance with Subsection 604(A) by the total number of County-owned passenger loading bridges then assigned for airline use or located at rented County-Controlled gates. The monthly Passenger Loading Bridge Charge shall be 1/12 of the annual Passenger Loading Bridge Charge as calculated above.

**Section 605 Landing Fee Rate**

The landing fee rate for the use of the Airfield shall be calculated as shown on Exhibit P.

- (A) The total costs of the Airfield Cost Center shall be calculated by adding together the following:
  - (1) direct and indirect Operation and Maintenance Expenses, any required deposits to the O&M Reserve Fund, and Major Maintenance Projects - Expensed allocable to the Airfield Cost Center;
  - (2) total debt service charged for Major Maintenance Projects - Capitalized and Capital Improvements financed with bonds and allocable to the Airfield Cost Center and put into service on or before the end of the following Calendar Year;

- (3) depreciation on land improvements, buildings and structures allocable to the Airfield Cost Center;
  - (4) Amortization of Major Maintenance Projects - Capitalized and Capital improvements financed with Airport Capital Improvement Fund funds allocable to the Airfield Cost Center that has been or will be placed in service prior to the end of the following Calendar Year;
  - (5) any required deposits to the Debt Service Coverage Fund resulting from the issuance of Additional Bonds allocable to the Airfield Cost Center;
  - (6) any replenishment of the Debt Service Reserve Fund and other reserve or restricted purpose funds allocable to the Airfield Cost Center, as may be required by the Bond Resolution; and
  - (7) any net loss incurred at Timmerman Airport.
- (B) The "Airfield Requirement" shall then be calculated by subtracting the following revenue items from the total costs of the Airfield Cost Center:
- (1) general aviation revenues including FBO income, rentals of hangars, T-hangars and buildings and land in the Airfield Cost Center, fuel and oil charges, and utility resale and reimbursements;
  - (2) air cargo building rentals;
  - (3) signatory cargo airline apron fees;
  - (4) Non-Signatory Airline landing fees and military use fees, if any;
  - (5) other non-airline revenues including other rental income,

catering fees, interest charges and other miscellaneous revenues;

(6) The net income of the Former 440th Military Base; and

(7) any net income incurred at Timmerman Airport.

(C) The Signatory Airline landing fee rate shall be calculated by dividing the Airfield Requirement by the projected aggregate Landed Weight of all Signatory Airlines and cargo airlines for the particular Calendar Year.

**Section 606 International Arrivals Building Facilities Charges**

(A) Airline shall pay charges for use of the International Arrivals Building Facilities at the rates and in the amounts established by the County.

(B) County shall issue monthly invoices for Airline's International Arrivals Building charges.

**Section 607 Aircraft Parking Apron Fees**

The rate for the use of the Aircraft Parking Apron shall be calculated as shown on Exhibit Q.

(A) The total costs of the Aircraft Parking Apron Cost Center shall be calculated by adding together the following:

(1) direct and indirect Operation and Maintenance Expenses, any required deposits to the O&M Reserve Fund, and Major Maintenance Projects - Expensed allocable to the Aircraft Parking Apron Cost Center;



- (2) total debt service charged for Major Maintenance Projects - Capitalized and Capital Improvements financed with Bonds and allocable to the Aircraft Parking Apron Cost Center and put into service on or before the end of the following Calendar Year;
  - (3) depreciation on land improvements, buildings and structures allocable to the Aircraft Parking Apron Cost Center;
  - (4) amortization of Major Maintenance Projects - Capitalized and Capital Improvements financed with Capital Improvement Reserve Fund funds allocable to the Aircraft Parking Apron Cost Center that has been or will be placed in service prior to the end of the following Calendar Year;
  - (5) any required deposits to the Debt Service Coverage Fund resulting from the issuance of Additional Bonds allocable to the Aircraft Parking Apron Cost Center; and
  - (6) any replenishment of the Debt Service Reserve Fund, and other reserve or restricted purpose funds allocable to the Aircraft Parking Apron Cost Center, as may be required by the Bond Resolution.
- (B) The net "Apron Requirement" shall be calculated by subtracting the following revenues items from the total Aircraft Parking Apron Cost Center:
- 1) Apron parking fees
  - 2) Hydrant fueling fees
- (C) The Aircraft Parking Apron Rate shall be calculated by dividing the net Apron Requirement of the Aircraft Parking Apron Cost Center by the total leased linear feet of Aircraft Parking Apron as measured twenty (20) feet from the face of the adjoining terminal building or as otherwise agreed upon by Airline and the County. Airline's charge for

use of the Aircraft Parking Apron shall be based upon its leased number of linear feet of Aircraft Parking Apron. The monthly Aircraft Parking Apron Fee shall be 1/12 of the annual Aircraft Parking Apron Fee as calculated above.

**Section 608 Other Charges**

Other charges payable by Airline, in addition to those specified elsewhere in this Agreement, shall be as follows:

- (A) Employee Parking Charges. Should Airline elect to furnish parking for its employees, Airline shall pay to County in advance by the first day of each December charges as are reasonably established by the County for the use of employee parking areas designated in Section 410 herein. County will refund to Airline the prorated annual parking charge for parking spaces no longer used by Airline employees.
- (B) Miscellaneous. Charges for miscellaneous items or activities not specified herein (e.g. badges, extraordinary electrical usage, personal property storage, etc.) shall be assessed by County as reasonably determined by Airport Director and paid by Airline.

**Section 609 Rate Adjustment**

If, at any time during any Calendar Year, the County projects that the total costs attributable to the Airport Terminal Building, the total costs attributable to the Airfield Cost Center, or the aggregate Landed Weight for all Signatory Airlines, including Affiliates, will vary 10% or more from the estimates used in setting rents, fees, and charges in accordance with the provisions of Article VI, such rates may be adjusted based on the new estimates and in accordance with the principles and procedures set forth in this Article. Such adjustments shall be made at the County's discretion and the resulting new rates shall be effective for the balance of such Calendar Year. The County shall notify Airline of a meeting for the purpose of

discussing any such rate adjustment, along with a written explanation of the basis for such rate adjustment, 45 days prior to the effective date of the new rates. Unless extraordinary circumstances warrant additional adjustments, the County shall limit any such rate adjustment to no more than once during each Calendar Year.

**Section 610 Year-End Adjustment to Actual and Settlement**

Following the completion of the County's accounting period 14-3 for each Calendar Year, but no later than 30 days thereafter, the County shall provide Airline with an accounting of the total costs actually incurred, revenues and other credits actually realized (reconciled to the year-end closeout financial statements of the County), and actual Originating Passengers and total Landed Weight during such Calendar Year with respect to each of the components of the calculation of rents, fees, and charges, and the County shall recalculate the rents, fees, and charges, and provide to Airline a settlement required for the Calendar Year based on those actual numbers. Following reasonable notification, the County shall convene a meeting with the Signatory Airlines and Signatory Cargo Airlines to discuss the calculation of the year-end settlement and shall give due consideration to the comments and suggestions made by the Signatory Airlines and Signatory Cargo Airlines before finalizing the settlement calculations.

- (A) If the Airline's Terminal Building Rents and Aircraft Parking Apron Fees paid during the Calendar Year combined are more than the required amount of Terminal Building Rents and Aircraft Parking Apron Fees as calculated during the year-end rate settlement process, such excess amount shall be transferred to the Operation and Maintenance Fund and will be refunded to Airline by check written from the Operation and Maintenance Fund as an Operation and Maintenance Expense within 60 days following the completion of the year-end settlement calculation. Similarly, if the Airline's landing fees paid during the Calendar Year are more than the required amount of landing fees as calculated during the year-end rate settlement process, such excess amount shall be

transferred to the Operation and Maintenance Fund and will be refunded to Airline by check written from the Operation and Maintenance Fund as an Operation and Maintenance Expense within 60 days following the completion of the year-end settlement calculation. Each Signatory Airline and Signatory Cargo Airline shall receive a share of the excess amount in proportion to the total amount that they paid in landing fees during that Calendar Year. However, the year-end settlement rate process may be modified at any time in the event that the process is determined to be illegal or, in the opinion of the Airport Director or County bond counsel, that the year-end settlement will result in a higher rate of interest being paid by County on its Bonds.

- (B) If the Airline's (i) Terminal Building Rents and Aircraft Parking Apron Fees or (ii) landing fees paid during the Calendar Year are less than the required amount of (i) Terminal Building Rents and Aircraft Parking Apron Fees or (ii) landing fees as calculated during the year-end rate settlement process, such deficiencies will be billed to Airline.

**Section 611 Non-Signatory Rates**

In recognition of the fact that Airline and other airlines which are signatory to this Agreement will be making a long-term commitment to pay rentals, fees, and charges for the use and occupancy of Airport, for the right to use and occupy same, County recognizes the need, appropriateness, and equity of imposing on non-signatory airlines utilizing said Airport, by ordinance or other appropriate method, rentals, fees and charges for all such services and facilities used that are one hundred twenty-five (125) percent of the rentals, fees, and charges being imposed on Airline and other Signatory Airlines pursuant to this Agreement. A Signatory Cargo Airline will be considered a Signatory Airline for the purpose of charging landing fees. The non-signatory rates will be adjusted concurrent with the adjustment of the rates of the Signatory Airlines. However, non-signatory

rates may be discontinued at any time in the event that they are determined to be illegal or, in the opinion of the Airport Director or County bond counsel that the existence of non-signatory rates will result in a higher rate of interest being paid by County on Airport bonds.

**ARTICLE VII: AIRPORT IMPROVEMENTS**

**Section 701 Airport Expansion**

As the County may deem necessary, it may incur costs to acquire land; plan, design and construct facilities; or purchase and install equipment to preserve, rehabilitate, protect, enhance, expand, or improve the Airport, or any part thereof, during the term of this Agreement in accordance with the provisions of this Article.

**Section 702 Five-Year Capital Improvement Program**

The County has developed a Five Year (CY 2011-CY 2015) Capital Improvement Program ("Five Year CIP") for the Airport, which is attached and incorporated herewith as Exhibit J. The total projected cost of the Five Year CIP is \$212,047,000 and the projected Net Financing Requirement is \$59,571,000. The Net Financing Requirement Cap during the term of the Agreement is established as one hundred percent (100%) of the projected Net Financing Requirement. The total cost of the Five Year CIP may be revised without MII approval as long as the Net Financing Requirement Cap is not exceeded.

(A) The Capital Improvements identified in the Five Year CIP are hereby approved by Airline. Accordingly:

- (1) the County may proceed with each and all of those Capital Improvements without additional review by the Signatory Airlines; provided, however, that County shall adhere to the general timing, budget estimates, and funding sources shown in Exhibit J;
- (2) the County may pay the Net Requirement associated with such Capital Improvements by using funds lawfully available for such

purposes, and may borrow funds in amounts sufficient to finance such projects;

- (3) the County may recover through rents, fees, and charges a proper allocation of the Net Requirement of such Capital Improvements through an Amortization beginning in the Calendar Year of beneficial use, in accordance with the provisions of Article VI.
- (B) Contemporaneously with the coordination process set forth in Section 602, and otherwise at any time during each Calendar Year as needed, the County shall report to all Signatory Airlines on the progress of its implementation of the Five Year CIP, including then-current cost estimates, funding sources, and expenditures to date.
- (C) It is the intent of the County to submit an application for a \$4.50 PFC including funding for a reasonable portion of the cost of the Baggage Claim Area Renovation - Construction project to be determined by the County in 2011, taking into account other capital requirements of the Airport. The amount of PFC-backed bonds issued for the Baggage Claim Area Renovation - Construction project will be deducted from the Net Financing Requirement Cap.

**Section 703 Review and Approval of Material Changes to Five-Year CIP**

- (A) If, following receipt of bids for a Capital Improvement, the projected cost of such Capital Improvement is greater than 110% of its projected cost as shown in Exhibit J, the County shall revise the Five Year CIP and provide a copy to the AAAC. If the revised Five Year CIP indicates that the Net Financing Requirement Cap will not be exceeded, the Capital Improvement shall be deemed approved for purposes of Section 702(A).
- (B) If, following receipt of bids for a Capital Improvement, the projected cost of such Capital Improvement is greater than 110% of the total cost as shown in Exhibit J and the revised Five Year CIP indicates

that the Net Financing Requirement Cap will be exceeded, the County shall initiate the Capital Improvement Review and Approval process described in Section 705.

**Section 704 Additional Approved Capital Improvements**

- (A) Airline recognizes that, from time to time, the County may consider it necessary, prudent, or desirable to undertake Capital Improvements other than those identified in the Five Year CIP or, if the option to extend the term of the Agreement is exercised, other than those identified in the new Five Year Capital Improvement Plan for the Years 2016 through 2020 ("Additional Approved Capital Improvements").
- (B) Contemporaneously with the coordination process set forth in Section 602, and otherwise at any time during each Calendar Year as needed, the County shall review and discuss all such proposed Additional Approved Capital Improvements with the AAAC. Following such meeting, the relevant Additional Approved Capital Improvements shall be deemed approved.
- (C) Notwithstanding the provisions of Subsections 703 (B) and Section 705, the County may undertake Additional Approved Capital Improvements, and recover the Net Requirement attributable to each such Additional Approved Capital Improvement through rents, fees, and charges, if such Additional Approved Capital Improvement is undertaken:
  - (1) to comply with federal, state, or local law, regulation, policy, grant agreement or airport certification requirements, or mandated by executive order or by an executive agency (state or federal) having jurisdiction over the activities at the Airport;
  - (2) to comply with a requirement of the Bond Resolution;
  - (3) as an emergency repair, replacement, or improvement to maintain the Airport's functional capability;
  - (4) to settle claims, satisfy judgments, or comply with judicial



orders rendered by a court of competent jurisdiction against the County, and pertaining to the Airport;

- (5) to repair casualty damage at the Airport not covered by insurance proceeds, if any;
- (6) to acquire land or rights to land to mitigate aircraft noise, or provide for sound insulation as part of a noise compatibility program approved by the federal government in accordance with the provisions of 14 C.F.R. Part 150;
- (7) to conduct environmental investigation and remediation at the Airport as required by applicable Environmental Laws and Environmental Permits; provided, however, that the County will use its best efforts to recover such costs from the party at fault, if such party is identified;
- (8) for safety reasons as required by the FAA or any other applicable government agency;
- (9) as a substitute project for a Capital Improvement that is identified in the Five Year CIP, which Capital Improvement is not to be undertaken due to changed circumstances at the Airport and is to be deleted from Exhibit J; provided, however, that:
  - (i) the substitute project is functionally equivalent, or is deemed by the County to be a better technical solution, to the Capital Improvement to be deleted from Exhibit J;
  - (ii) the Net Cost of such substitute project is equal to or less than the Net Cost of the Capital Improvement being deleted; and
  - (iii) for purposes of calculating rents, fees, and charges, the Net Cost of such substitute project is allocated to the same Cost Center as that shown on Exhibit J for the Capital Improvement being deleted; or
- (10) as a substitute project for a Capital Improvement that is identified in the Five Year CIP, which Capital Improvement is not

to be undertaken at the request of the Signatory Airlines, and is to be deleted from Exhibit J; provided, however, that:

- (i) the Net Cost of such substitute project is equal to or less than the Net Cost of the Capital Improvement being deleted; and
- (ii) for purposes of calculating rents, fees, and charges, the Net Cost of such substitute project is allocated to the same Cost Center as that shown on Exhibit J for the Capital Improvement being deleted.

When undertaking Additional Approved Capital Improvements, and consistent with prudent business practices, the County will apply for all available federal and state grants-in-aid, and may seek approval for collection and use of Passenger Facility Charges to the extent permitted by law or FAA policy.

- (D) County may proceed with any additional Capital Improvement that does not impact Airline's rates and charges through depreciation or amortization charges.

**Section 705 Capital Improvement Review and Approval Process**

If the County plans to initiate a Capital Improvement project that will result in a revised Five Year CIP for which the Net Financing Requirement will exceed the Net Financing Requirement Cap, then the County and the AAAC will follow the following process:

- (A) The Airport Director shall submit a report on the proposed Capital Improvement(s) to the AAAC including for each project an estimate of its construction and operating costs, description of the work proposed, its benefits and funding sources. Subsequent to receipt of said report, the following procedural steps are established:

- (B) MII of the Signatory Airlines (including Signatory Cargo Airlines, for projects located in the Airfield Cost Center or the Former 440<sup>th</sup> Military Base) will either approve, disapprove, or make no comment within thirty (30) days of receipt of the information.
- (C) The AAAC may request a meeting with the Airport Director for the purpose of commenting on any proposed Capital Improvement.
- (D) Each Capital Improvement referred to in the report shall be deemed approved unless written disapproval is received by the Airport Director within thirty (30) days of AAAC receipt of the report. The AAAC may, notwithstanding any prior written disapproval, rescind such action and approve in writing any Capital Improvement at any of the County's established procedural steps.
- (E) County may resubmit substantially the same Capital Improvement in the second Calendar Year for AAAC action and the aforesaid procedural steps shall again be followed.
- (F) County may proceed with any disapproved Capital Improvement at any time during the first two Calendar Year submissions, provided, however, that the cost of said Capital Improvement shall not at any time, directly or indirectly, become part of the calculation of residual rates, fees and charges assessed to the Signatory Airlines. However, if County makes a Capital Improvement and an Airline subsequently decides to occupy and/or use the Capital Improvement, it shall pay such rentals, fees and charges as shall be set by County.
- (G) After the second Calendar Year budget submittal, should the County desire to proceed with a Capital Improvement, the aforesaid procedural steps shall again be followed.
- (H) County may proceed with any Capital Improvement during the third Calendar Year submission without AAAC approval and include its costs

in the calculation of the airline rentals, fees and charges.

**Section 706 Major Maintenance Projects - Expensed**

For the purposes of calculating rents, fees, and charges in accordance with Article VI, the cost of Major Maintenance Projects - Expensed shall be allocated to the applicable Cost Center and expensed in the Calendar Year in which they occur. The County will make its best efforts to disclose all proposed Major Maintenance Projects - Expensed for each Calendar Year as part of the coordination process in accordance with Section 602. Airline recognizes, however, that certain unbudgeted Major Maintenance Projects - Expensed may be required to be undertaken during the course of any Calendar Year in order to properly operate, maintain, or repair the Airport facilities. The County reserves the right to undertake such Major Maintenance Projects - Expensed as it deems necessary; provided, however, that the County shall not subdivide Capital Improvements into smaller projects solely for the purpose of re-characterizing such Capital Improvements as Major Maintenance Projects - Expensed to avoid a Majority-In-Interest review in accordance with Subsection 705(B).

**Section 707 Passenger Loading Bridge Program**

Airline acknowledges that it is the County's long-term policy to own all the passenger loading bridges at the Airport Terminal Building. It is the intent of the County, as included in the Five Year CIP, to purchase additional passenger loading bridges and to utilize PFCs and the ADFA to fund these purchases. Notwithstanding any other provision in this Agreement, the County may elect during the term of this Agreement to: (i) replace any existing County-owned passenger loading bridges, (ii) purchase passenger loading bridges to be installed at Gates lacking such equipment, and/or (iii) enter into negotiations with any airline serving the Airport Terminal Building to acquire and/or replace any or all Airline-owned passenger loading bridges at the Airport Terminal Building.

**Section 708 Expenditures for Planning and Preliminary Design**

Airline recognizes that, from time to time, the County may engage with outside professionals to provide planning and preliminary design services to define the scope and costs of proposed Capital Improvements. The County reserves the right to undertake such services, and the County reserves the right to include the Net Requirement of such services in the rents, fees, and charges upon completion of such Capital Improvements, or if and when such projects are ultimately cancelled. Net Requirement of planning and preliminary design for projects that proceed to construction shall be amortized over the useful life of the project. Net Requirement of planning and preliminary design of projects that are cancelled shall be amortized over five years. This Section shall relate only to preliminary design efforts required to define the scope, configuration, technical specifications and estimated cost of a proposed Capital Improvement, but not final design or construction documents. Contemporaneously with the coordination process set forth in Section 602, the County shall review and discuss with the Signatory Airlines any actions proposed to be taken in accordance with this Section during the upcoming year.

**Section 709 Effect of Construction on Leased Premises**

(A) County shall have the right, at such times as may be reasonable for purposes of maintaining or constructing improvements, modifications, or expansions to the Airport, to close, relocate, reconstruct, change, alter, or modify the Leased Premises and/or the means of access to the Leased Premises pursuant to this Agreement or otherwise, either temporarily or permanently; provided, however, that the County shall provide:

- (1) reasonable notification of the construction activities to Airline; and

- (2) adequate means of ingress and egress for the Leased Premises or, in lieu thereof, alternate premises of comparable size, condition, utility, and location to the Leased Premises, to the extent reasonably possible, with adequate means of ingress and egress.
- (B) If reasonable alternate premises are provided to Airline by the County in accordance with Subsection 709(A)(ii), Airline shall vacate the Leased Premises, or portions thereof, and relocate to the alternate space, and Airline's rent shall continue without abatement, adjusted for any change in the amount of Leased Premises. The County shall pay all costs resulting from such relocation, including the un-depreciated value of Airline's improvements; provided, however, that in lieu of reimbursing the un-depreciated value of Airline's improvements, the County may replace such tenant's improvements with like improvements in the alternate space. Relocation costs will be considered as part of the cost of a Capital Improvement and included in any applicable cost recovery.
- (C) If no alternate premises are provided to Airline by the County in accordance with Subsection 709(A)(ii), and if any part of the Leased Premises is rendered un-tenantable, as determined by the County, as a result of an action taken by the County under this Section, the rents payable hereunder with respect to the Leased Premises shall be abated ratably in the proportion that the un-tenantable area bears to the total Leased Premises of the same category or type of space. Such abatement in rent will continue until such time as the affected Leased Premises are restored adequately for Airline's use.

**Section 710 Use of Capital Improvement Reserve Fund (CIRF)**

In lieu of other funding, the County may choose to use funds on deposit in the Capital Improvement Reserve Fund to fund capital improvements at the Airport. If the Capital Improvement Reserve Fund is used, the County shall

amortize the portion of the project funded from the Capital Improvement Reserve Fund over the useful life of the project using the County's Cost of Capital. For projects in Airport Cost Centers, the amortization shall be included in the calculation of rates and charges. However, if the use of the Capital Improvement Reserve Fund is for a project in the Airline's exclusive area, then the amortization period shall not exceed 5 years.

**Section 711 Alterations and Improvements by Airline**

Airline may construct and install, at Airline's sole expense, such improvements in its Airline Premises as Airline deems to be necessary for its operations. The plans and specifications, location, and construction schedule for such improvements, including any substantial alteration or addition thereto, must be submitted to and approved by the Airport Director prior to the commencement of any and all such construction or installation. Airline shall comply with the requirements of all applicable laws and building codes and the County's Rules and Regulations governing tenant construction, alterations, and improvements, including compliance with the County's IT policy and procedures regarding the installation of all cabling, telecommunications hardware and related infrastructure. No reduction or abatement of rents, fees, and charges shall be allowed for any interference with Airline's operations by such construction. All such alterations and improvements by Airline shall be subject to the following: The Airport Director shall have the right to refuse approval of such plans and specifications if the external appearance of such alteration or improvement of facilities in publicly-viewed areas does not meet the County's requirements for substantial uniformity of appearance of facilities on the Airport, or, if the type or time of construction of such alteration or improvement, or the location thereof does not meet the County's requirements for safe use of the Airport and appurtenances by other authorized persons. The County may, at its own cost, inspect any such alterations or improvements.

- (A) All improvements made to Airline's Airline Premises and permanent additions or alterations thereto made by Airline, except those financed by the County, shall be and remain the property of Airline until expiration of the term of this Agreement. Upon expiration or early termination of this Agreement, said additions and alterations shall become the property of the County; provided, however, that any trade fixtures, signs, equipment, and other movable personal property of Airline shall remain the property of Airline, subject to the terms of Section 1102. Notwithstanding the above, the County, upon expiration or termination of the Term, shall have the option to require the Airline to return the Airline Premises to the condition existing prior to their use.
- (B) Airline shall promptly pay all lawful claims made against the County and discharge all liens filed or which exist against the Airline Premises, any other portion of the Airport, or Airline's trade fixtures or trade equipment arising out of or in connection with the failure to make payment for work done or materials provided by Airline, its contractors, subcontractors, or material men. Airline shall have the right to contest the amount or validity of any such claim or lien without being in default hereunder; provided, however, that while contesting the amount and validity of any such claims or liens, Airline shall provide the County, at the County's request, with a performance bond in an amount equal to the amount of the claim or lien. Airline shall give timely Notice to the County of all such claims and liens. At County's request, Airline shall furnish the County with written proof of payment of any item that would or might constitute the basis for such a lien on the Airline Premises if not paid.
- (C) Airline shall use, and shall cause each of its officers, directors, employees, agents, contractors, and suppliers to use, the highest degree of care when entering upon any property owned by the County in connection with the work. Airline shall comply, and shall cause each



of its officers, directors, employees, agents, contractors, and suppliers to comply, with any and all instructions and requirements for the use of County-owned property.

(D) In any contract relating to the construction or installation of improvements in the Airline Premises, Airline shall require each of its contractors and suppliers to:

(1) carry a policy of Builders Risk Insurance in accordance with Section 1002(C), unless Airline provides County with evidence of such coverage; and

(2) furnish performance and payment bonds in the full amount of any contract in a form acceptable to the County. Payment bonds shall comply with the coverage requirements and conditions of Wisconsin Revised Statutes, as amended. Copies of the bonds shall be given to the County for approval before work begins. Any sum or sums derived from said performance and payment bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

(E) Upon the completion of the improvements hereunder, Airline shall submit to the County a copy of its acceptance letter certifying completion, a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Airline, and a certified set of "as built" drawings.

(F) If Airline constructs improvements without the approval of the Airport Director and/or Airline does not submit "as built" drawings, the Airport Director may either require their removal by Airline or remove the improvements at Airline's expense and assess a penalty of up to Ten Thousand Dollars (\$10,000.00) per occurrence.

**Section 712 Nondisturbance of Airport Tenants and Operations**

Any work by Airline and its contractors shall be conducted in an orderly and proper manner, and shall not otherwise disturb, create a hazard, or interfere with other projects on, or the operations of, the Airport. Airline shall promptly comply, and shall cause its contractors to comply, with any reasonable request from the County to correct its conduct or that of its contractors. If Airline or its contractors fails to comply with the provisions of this Section, the County shall have the right to stop any or all work being performed, until such compliance is achieved, without terminating this Agreement.

**ARTICLE VIII: MAINTENANCE AND OPERATION OF AIRPORT**

**Section 801 General**

- (A) Airline will furnish janitorial service to its Exclusive Use Premises, Preferential Use Premises and its preferential Aircraft Parking Apron, keeping them in a neat, orderly, sanitary and presentable condition, free of trash, rubbish or other debris, including, but not limited to, fuel or lubricant spills. Airline shall cause to be removed, at Airline's own expense, from its assigned premises all waste, garbage and rubbish and agrees not to deposit same on any part of Airport, except that Airline may deposit same temporarily in its Exclusive Use Premises or Preferential Use Premises or in space designated by County in connection with collection for removal. Should Airline refuse or neglect to provide adequate janitorial service to its Exclusive Use Premises, Preferential Use Premises and its preferential Aircraft Parking Apron as provided herein, County shall give written notice to Airline of its failure to provide adequate janitorial service to its premises. Airline shall have two (2) days following receipt of said notice to perform the specified janitorial service. If Airline has not furnished the specified janitorial service within the two (2) day period, County shall have the right to perform such janitorial service on behalf of the Airline. County's operating and maintenance cost for such janitorial service plus a 15% administrative charge shall be paid by Airline no later than twenty (20) days following date of an invoice from the County.
- (B) Airline will maintain its Exclusive Use Premises, Preferential Use Premises and its preferential Aircraft Parking Apron in safe and proper working order as specified in Exhibit G. Should Airline refuse or neglect to maintain or repair damages to its Exclusive Use Premises, Preferential Use Premises and its preferential Aircraft Parking Apron as specified in Exhibit G, County shall give written notice to Airline of its failure to maintain or repair its premises.

Airline shall have ten (10) days following receipt of said notice to perform the specified maintenance or repair unless such failure to maintain or repair presents an immediate threat of injury to persons or damage to property. If Airline has not commenced the specified maintenance or repairs within the ten (10) day period and/or completed such maintenance or repairs within 30 days of its commencement or received an extension to complete such maintenance or repairs from the County, or if such failure to maintain or repair presents an immediate threat of injury to persons or damage to property, County shall have the right to perform such maintenance or repairs on behalf of the Airline. County's operating and maintenance cost for such maintenance or repairs plus a 15% administrative charge shall be paid by Airline no later than twenty (20) days following completion of the work and date of an invoice from County.

- (C) Responsibility for maintenance, cleaning and operation of facilities shall be as set forth in Exhibit G.
  
- (D) The airlines may, subject to the approval of the Airport Director, establish a consortium which will be responsible for the maintenance and operation of facilities and equipment at the Airport. The Airport Director will also approve the standards to which the facilities and equipment will be maintained.

**ARTICLE IX: DAMAGE OR DESTRUCTION**

**Section 901 Partial Damage**

If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render Airline Premises unusable as reasonably determined by County and Airline, the same shall be repaired to usable condition with due diligence by County as hereinafter provided with no rental abatement whatsoever.

**Section 902 Substantial Damage**

If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be so extensively damaged by fire or other casualty as to render any portion of said Airline Premises unusable but capable of being repaired, as reasonably determined by County and Airline, the same shall be repaired to usable condition with due diligence by County as hereinafter provided. In such case, the rent payable hereunder with respect to Airline's affected Airline Premises shall be paid up to the time of such damage and shall thereafter be abated equitably in proportion as the part of the area rendered unusable bears to total Airline Premises until such time as such affected Airline Premises shall be restored adequately for Airline's use. County shall use its best efforts to provide Airline with suitable alternate facilities to continue its operation while repairs are being completed, at a rental rate not to exceed that provided in this Agreement for the unusable space.

**Section 903 Damage Not Repairable**

- (A) If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Airline Premises incapable of being repaired as

reasonably determined by County and Airline, County shall notify Airline within a period of ninety (90) days after the date of such damage of its decision to reconstruct or replace said space, provided County shall be under no obligation to replace or reconstruct such Airline Premises. The rentals payable hereunder with respect to affected Airline Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Airline.

(B) In the event County reconstructs or replaces affected Airline Premises, County shall use its best efforts to provide Airline with suitable alternate facilities to continue its operation while reconstruction or replacement is being completed, at a rental rate not to exceed that provided in this Agreement for the damaged space; provided, however, if such damaged space shall not have been replaced or reconstructed, or County is not diligently pursuing such replacement or reconstruction within ninety (90) days after the date of such damage or destruction, Airline shall have the right, upon giving County thirty (30) days advance written notice, to cancel that portion of this Agreement relating to the affected Airline Premises, but the Agreement shall remain in effect with respect to the remainder of said Airline Premises, unless the affected Airline Premises render use of the remaining Airline Premises impracticable, in which case Airline may terminate the entire Agreement upon thirty (30) days written notice.

(C) In the event County does not reconstruct or replace affected Airline Premises, County shall meet and consult with Airline on ways and means to permanently provide Airline with adequate replacement space for affected Airline Premises; provided however, Airline shall have the right, upon giving County thirty (30) days advance written notice, to cancel that portion of this Agreement relating to the affected Airline Premises, but the Agreement shall remain in full force and effect with respect to the remainder of said Airline Premises, unless the affected

Airline Premises render use of the remaining Airline Premises impracticable, in which case Airline may terminate the entire Agreement upon thirty (30) days written notice.

**Section 904 General**

- (A) Notwithstanding the provisions of this Article IX, in the event that due to the negligence or willful act of Airline or of its employees (acting within the course or scope of their employment) or agents, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the restoration or replacement of said Airline Premises and Airline shall have no option to cancel the Agreement under the provisions of this Article IX, Section 903. To the extent that the cost of repairs shall exceed the amount of any insurance proceeds payable to the County by reason of such damage or destruction, Airline shall pay the amount of such cost to the County.
- (B) County shall maintain levels of insurance required under its Bond Resolution, provided, however, that the County's obligations to reconstruct or replace under the provisions of this Article IX shall in any event be limited to restoring affected Airline Premises to substantially the condition that existed prior to the improvements made by Airline and shall further be limited to the extent of insurance proceeds available to County for such reconstruction or replacement. Airline agrees that if the County elects to reconstruct or replace as provided in this Article IX, then Airline shall proceed with reasonable diligence and at its sole cost and expense to reconstruct and replace its improvements, signs, fixtures, furnishings, equipment and other items provided or installed by Airline in or about Airline Premises in a manner and in a condition at least equal to that which existed prior to its damage or destruction.

**ARTICLE X: INDEMNIFICATION AND INSURANCE**

**Section 1001 Indemnification**

(A) Airline covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the County and the elected officials, employees, directors, volunteers and representatives of the County, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions demands, causes of actions, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the County to the extent directly or indirectly arising out of resulting from or related to Airline's activities in, on or about Airline Premises, or from any operation or activity of Airline upon the Airport Premises, or in connection with its use of Airline Premises, including any acts or omissions of Airline, any agent, officer, director, representative, employee, consultant or subcontractor of Airline, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without however, the County waiving any governmental immunity or other rights available to the County under Wisconsin Law and without waiving any defenses of the parties under Wisconsin Law. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Airline shall promptly advise the County in writing of any claim or demand against the County or Airline known to Airline related to or arising out of Airline's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Airline's cost. County shall have the right, at its option and at its own expense, to participate in such defense without relieving Airline of any of its obligations under this paragraph.



(B) It is the express intent of the parties to this Agreement, that the indemnity provided for in this Article is an indemnity extended by Airline to indemnify, protect, and hold harmless, the County from the consequences of the County's own negligence, provided however, that the indemnity provided for in this section shall apply only when the negligent act of the County is a contributory cause of the resulting injury, death, or damage, and shall have no application when the negligent act of the County is the sole cause of the resulting injury, death or damage. Airline further agrees to defend, at its own expense and on behalf of the County and in the name of the County, any claim or litigation brought against the County and its elected officials, employees, officers, directors, volunteers, and representatives, in connection with any such injury, death, or damage for which this indemnity shall apply, as set forth above.

**Section 1002 Insurance**

(A) Without limiting the Airline's obligation to indemnify the County of Milwaukee, and prior to the commencement of any operations, under this Agreement, Airline shall furnish an original or electronic copy of Certificate(s) of Insurance to the Airport, which shall be completed by a broker or an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or electronic copy of the form(s) must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the Airport. The Airport shall have no duty to perform under this Agreement until such certificate shall have been delivered to the Airport, and no officer or employee other than the Risk Manager shall have authority to waive this requirement.

- (B) County reserves the right to review the insurance requirements of this section during the effective period of this Agreement and any extension or renewal hereof, and to modify insurance coverage and their limits when deemed necessary and prudent by County's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will County allow modification whereupon the Airport may incur increased risk.
- (C) Airline's financial integrity is of interest to the County, therefore, subject to Airline's right to maintain reasonable deductibles in such amounts as are approved by the County, Airline shall obtain and maintain in full force and effect for the duration of this Agreement and any extension thereof, at Airline's sole expense, insurance coverage written on occurrence basis, by companies authorized and admitted to do business in and to be served notice in the State of Wisconsin and rated A or better by A.M. Best Company and/or otherwise acceptable to Lesser, in the following types:

**TYPE OF INSURANCE**

**LIMITS OF LIABILITY**

Comprehensive Airline Liability Insurance, including Premises Liability and Aircraft Liability, in respect of all aircraft owned, used, operated or maintained by Named Insured

\$100,000,000 each accident

Commercial General Liability insurance to include coverage for the following:

- General Aggregate \$10,000,000 per occurrence; \$25,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage.

(A) Premise/Operations \$10,000,000

- |                                      |   |
|--------------------------------------|---|
| (B) Pollution Liability*             | \$5,000,000/occurrence/annual aggregate<br>\$500,000/self-insurance retention |
| (C) Products/Completed Operations    | \$10,000,000  |
| (D) Contractual Liability            | \$10,000,000  |
| (E) Explosion, Collapse. Underground | \$10,000,000  |
| (F) Fire legal liability             | \$50,000  |
- Business Automobile Liability (airside and landside) Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000
  - Scheduled Autos
  - Owned/Leased Automobiles
  - Non-owned Automobiles
  - Hired Automobiles
  - Worker's Compensation Statutory
  - Employer's Liability \$1,000,000/\$1,000,000/\$1,000,000
  - Property Insurance Value of Airline Property on premises, to include improvements and betterments.
- If Airline has been approved as self-funded under Wisconsin Law and complies with the County of Milwaukee Self-Insurance requirements, County may accept the Airline's certificate of self-funding or self-insurance.

(D) The Airport shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Airport, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such

request by Airport, the Airline shall exercise reasonable efforts to accomplish such changes in policy, and shall pay the cost thereof.

(E) Airline agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- (1) Name the County of Milwaukee and its officers, employees, agents and elected representatives as additional insured's as respects operations and activities of, or on behalf of the named insured performed under contract with the Airport, with the exception of the worker's compensation and property insurance policy;
- (2) The Airline's insurance shall be deemed primary with respect to any collectible insurance or self insurance carried by the County of Milwaukee for liability arising out of Airline's operations under the contract with the Airport;
- (3) Worker's compensation and employers' liability policy will provide a waiver of subrogation in favor of the County of Milwaukee; and
- (4) Provide for provision stating that the Airline's insurance is primary without right of contribution from any insurance maintained by Airport and/or County of Milwaukee arising out of operations of Airline.

(F) Airline shall notify the Airport in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the Airport at the following address:

Airport Properties Manager  
General Mitchell International Airport  
5300 S. Howell Avenue  
Milwaukee, WI 53207-6189

- (G) The proceeds for any such insurance, paid on account of fire, explosion or other damage shall be used to defray the cost of repairing, restoring or reconstructing said improvements, as necessary.
- (H) It is expressly understood and agreed that all operations of Airline under this Agreement between Airport and Airline shall be covered by such policies of insurance or self insurance as approved by the County's Risk Manager and that all personal property placed in the Leased Premises shall be at the sole risk of Airline. The procuring of policies of insurance shall not be construed to be a limitation upon Airline's liability or as a full performance on its part of the indemnification provisions of this Agreement. Airline's obligations are notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the Airport.
- (I) County shall insure or cause to be insured at all times during the term of this Agreement, with a responsible insurance company, companies, or carriers authorized and qualified under the laws of the State of Wisconsin to assume the risk thereof, to the extent insurable, all of County's buildings, structures, fixtures and fixed equipment on the Airport System against direct physical damage or loss from fire and against the hazards and risks covered under extended coverage in an amount of the insurable value of the property. Provided, however, that County may self-insure the policy deductible, and if it shall do so, and if there shall be a physical damage or loss from fire or hazards or risks of less than the deductible, the said loss shall become part of the residual cost for the year of said loss and charged against the appropriate Cost Center; provided further that

if at any time County shall be unable to obtain insurance coverage to the extent above required, County shall maintain such insurance to the extent reasonably obtainable.

**ARTICLE XI: CANCELLATION BY COUNTY - EVENTS OF DEFAULT BY AIRLINE**

**Section 1101 Events of Default by Airline**

Each of the following shall constitute an "Event of Default by Airline":

- (A) Airline fails to pay rentals, fees and charges when due, and such default continues for a period of fifteen (15) days after receipt by Airline of written notice thereof.
- (B) Airline fails after the receipt of written notice from County to keep, perform or observe any term, covenant or condition of this Agreement (other than as set forth in Subsection 1101 (A) above) to be kept, performed or observed by Airline, and such failure continues for thirty (30) days after such receipt or if by its nature such Event of Default cannot be cured within such thirty (30) day period, if Airline shall not commence to cure or remove such Event of Default within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.
- (C) Airline shall become insolvent; shall take the benefit of any present or future insolvency statute; shall make a general assignment for the benefit of creditors; shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof; or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.
- (D) An Order for Relief shall be entered at the request of Airline or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
- (E) A petition under any part of the federal bankruptcy laws or an action

under any present or future insolvency law or statute shall be filed against Airline and shall not be dismissed within sixty (60) days after the filing thereof.

- (F) By or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, or agency, an officer, receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Airline and such possession or control shall continue in effect for a period of fifteen (15) days.
- (G) Airline shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter other than through merger with a successor corporation, as set forth in Section 1401 of this Agreement.
- (H) The rights of Airline hereunder shall be transferred to, pass to, or devolve upon, by operations of law or otherwise, any other person, firm, corporation, or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in paragraphs C through G of this section.
- (I) Airline shall voluntarily discontinue its operations at the Airport for a period of thirty (30) days unless otherwise agreed to by County and Airline.

**Section 1102 Remedies for Airline's Default**

- (A) Upon the occurrence of an Event of Default by Airline, Airline shall remain liable to County for all arrearages of rentals, fees and charges payable hereunder and for all preceding breaches of any covenant herein contained. County, in addition to the right of termination and to any other rights or remedies it may have at law or in equity, shall have the right of reentry and may remove all Airline



persons and property from Airline Premises. Upon any such removal, Airline property may be stored in a public warehouse or elsewhere at the cost of, and for the account of, Airline. Should County elect to reenter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may, at any time subsequent to an Event of Default by Airline, terminate this Agreement and relet Airline Premises and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this Agreement) and at such rentals, fees and charges and upon such other terms and conditions as County in its sole discretion may deem advisable, with the right to make alterations, repairs or improvements on said Airline Premises. No reentry or reletting of the Airline Premises by County shall be construed as an election on County's part to forfeit its rights under this Agreement and shall not affect the obligations of Airline for the unexpired term of the Agreement. In reletting Airline Premises, County shall be obligated to make a good faith effort to obtain terms and conditions no less favorable to itself than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of Airline's Event of Default.

- (B) Even if County elects to terminate this Agreement, Airline shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until expiration of this Agreement subject to the provisions of this Agreement.
  
- (C) In the event that County re-lets, rentals, fees and charges received by County from such reletting shall be applied: first, to the payment of any indebtedness other than rentals, fees and charges due hereunder from Airline to County; second, to the payment of any cost of such reletting; third, to the payment of rentals, fees and charges due and unpaid hereunder; and the remaining balance, if any, shall be held by County and applied in payment of future rentals, fees and charges as the same may become due and payable hereunder. Should that portion of

such rentals, fees and charges received from such re-letting which is applied to the payment of rentals, fees and charges hereunder, be less than the rentals, fees and charges payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to County. Airline shall also pay to County, as soon as ascertained, any costs and expenses incurred by County in such re-letting not covered by the rentals, fees and charges received from such reletting.

- (D) Notwithstanding anything to the contrary in this Agreement, if a dispute arises between County and Airline with respect to any obligation or alleged obligation of Airline to pay money, the payment under protest by Airline of the amount claimed by County to be due shall not waive any of Airline's rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then County shall as promptly as reasonably practicable reimburse Airline any amount determined as not due.
- (E) Airline shall pay to County all costs, fees, and expenses incurred by County in the exercise of any remedy upon an Event of Default by Airline.
- (F) To the extent that the County's right to terminate this Agreement as a result of an event enumerated in Section 1101 is determined to be unenforceable under the Federal Bankruptcy Code, as amended from time to time, or under any other statute, then the Airline and any trustee who may be appointed agree: (i) to perform promptly every obligation of the Airline under this Agreement until this Agreement is either assumed or rejected under the Federal Bankruptcy Code; (ii) to pay on a current basis all rentals, fees, and charges set forth in this Agreement; (iii) to reject or assume this Agreement within sixty (60) days of a filing of a petition under the Federal Bankruptcy Code; (iv) to cure or provide adequate assurance of a prompt cure of any default of the Airline under this Agreement; and (v) to provide to the County such adequate assurance of future performance under this Agreement as

may be requested by the County, including a tender of a Performance Guarantee as set forth in Section 508 of this Agreement.

**Section 1103      Effect of Airline's Default or Breach on Other Agreements**

Notwithstanding any other legal effect of or remedy for Airline's default or breach under this Agreement, any acts of default or breach under the following agreements shall also constitute a default or breach under this Agreement: Any agreement related to or involving the following operations and activities at the Airport, regardless of the other parties to such agreement:

- (1) The operation and management of the airport/airline hydrant fuel system;
- (2) The operation and management of any portion of the Airport Terminal Building by an airline consortium; or
- (3) Any other consortium approved by the Airport Director.

**ARTICLE XII: CANCELLATION BY AIRLINE - EVENTS OF DEFAULT BY COUNTY**

**Section 1201 Events of Default by County**

Each of the following events shall constitute an "Event of Default by County":

- (A) County fails after receipt of written notice from Airline to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by County and such failure continues for thirty (30) days or if by its nature such Event of Default cannot be cured within such thirty (30) day period, if County shall not commence to cure or remove such Event of Default within said thirty (30) days and to cure or remove the same as promptly as reasonably practical.
- (B) The permanent closure of the Airport as an air carrier airport by act of any Federal, state or local government agency having competent jurisdiction.
- (C) The assumption by the United States Government or any authorized agency of the same (by executive order or otherwise) of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Airline from conducting its operations, if such restriction be continued for a period of ninety (90) days or more.

**Section 1202 Remedies for County's Defaults**

Upon the occurrence of an Event of Default by County, Airline shall have the right to suspend or terminate this Agreement and all rentals, fees and charges payable by Airline under this Agreement shall abate during a period of suspension or shall terminate, as the case may be. In the event that Airline's operations at the Airport should be restricted substantially by

action of any governmental agency having jurisdiction thereof, then Airline shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of a just proportion of the payments to become due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

**ARTICLE XIII: SURRENDER OF AIRLINE PREMISES**

**Section 1301 Surrender and Delivery**

Promptly upon the termination of this Agreement, by lapse of time or otherwise, Airline shall at once peaceably surrender and deliver to County Airline Premises and all improvements thereon to which County is entitled hereunder.

**Section 1302 Removal of Property**

Airline shall have the right at any time during the term of this Agreement to remove from the Airport its aircraft, tools, equipment, trade fixtures, and other personal property, title to which is to remain in Airline unless otherwise set forth in this Agreement, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property, within fifteen (15) days following the cancellation or termination whether by expiration of time or otherwise of this Agreement, subject, however, to any valid lien which County may have thereon for unpaid rentals, fees and charges. Airline shall not abandon any portion of its property without the written consent of County. Any and all property not removed by Airline within fifteen (15) days following the termination of this Agreement shall, at the option of County, become the property of County at no cost to County. All County property damaged by or as a result of the removal of Airline property shall be restored by Airline to the condition existing before such damage, at Airline's expense.

**ARTICLE XIV: ASSIGNMENT, SUBLETTING AND USE FEES**

**Section 1401      Assignment and Subletting by Airline**

- (A) Airline shall not, directly or indirectly, assign, sell, hypothecate or otherwise transfer this Agreement, or any portion of Airline Premises, without the prior written consent of County, which may be given only by or pursuant to a resolution adopted by the County Board of Supervisors, provided that the foregoing shall not prevent the assignment of this Agreement to any corporation with which Airline may merge or consolidate, or which may succeed to the business of Airline, provided such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge by a writing satisfactory in form and content to County that it has assumed all obligations of Airline and will fully honor all the terms and conditions set forth in this Agreement.
- (B) Airline shall not, without the prior written consent of the County, sublease Airline Premises, except to an Affiliate. The parties hereto agree that County may reasonably withhold such consent if County has substantially similar space available but unleased; if County can make such space available for lease within a reasonable time; or if the space is necessary to accommodate a carrier other than the proposed sub-lessee, which the County has not otherwise been able to accommodate under the provisions of this lease. Exclusive use of Airline Premises, or any part thereof, by anyone other than Airline shall be considered a sublease.
- (C) In the event Airline requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement, if prepared. In the event such proposed sublease agreement has not been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with Airline's request for tentative approval by County. The area or space to be

subleased and the rental to be charged shall be specified, and all other information reasonably requested by County pertaining to said sublease shall be promptly provided. A fully executed copy of such sublease shall be submitted to Airport Director for final review no later than thirty (30) days following occupancy of Airline Premises, or any portion thereof, by the sublessee.

- (D) In the event of a sublease where the rentals, fees and charges for the subleased premises exceed the rentals, fees and charges payable by Airline for said premises pursuant to this Agreement, Airline shall pay to County as Revenues the excess of the rentals, fees and charges received from the sublessee over that specified to be paid by Airline herein, provided that Airline may charge a reasonable fee for administrative costs, not to exceed 15% of the specified sublease rental, and such 15% shall not be considered excess rentals, fees and charges. Airline shall also have the right to charge a reasonable fee to others for the use of Airline's capital equipment and to charge for use of utilities and other services being paid for by Airline.
  
- (E) In the event Airline agrees to ground handle any portion of the operations of an Affiliate, Airline shall use its best efforts to provide County advance written notice of such proposed activities, including a description of the type, extent, frequency and duration of the service to be provided. In such event, and with exception of landing fees, Airline shall be responsible to County for the payment of rents, landing fees and PFCs and the filing of all reports required on behalf of such Affiliate. Further, and in the event that such Affiliate shall not maintain in force and provide evidence thereof to County insurance of the types and in such amounts as required in Article X of this Agreement, Airline shall cause County to be named as an additional indemnitee in any agreement of indemnification provided by such Affiliate to Airline and as an additional insured in all policies of insurance provided by such Affiliate to Airline.



(F) No sublease or temporary use agreement shall release Airline from its obligations to pay the rentals, fees and charges provided herein. Notwithstanding the above, other airlines by prior arrangements with Airline, and subject to County's prior written consent, may use Airline's Airline Premises on a temporary basis pursuant to and in accordance with the provisions of Article XV.

**ARTICLE XV: ACCESS**

**Section 1501 Declaration of Intent**

The parties acknowledge the objective of the County is to offer to all airlines desiring access to the Airport and to provide adequate Gate Positions and space in the Terminal. Recognizing that physical and financial limitations may preclude timely expansion of the Terminal and Aircraft Parking Apron areas to meet the stated requests of Airline and/or such other airlines for additional facilities, County hereby states its intent to pursue the objective of achieving an optimum balance in the overall utilization of Terminal and Aircraft Parking Apron to be achieved, if necessary, through sharing and reassignment, from time to time, of Gates (and associated Aircraft Parking Aprons, appurtenant equipment, and ancillary support space which are reasonably necessary for the effective use of such Gates), ticket counters and associated areas, and other Terminal facilities, as further provided in Article IV.

**Section 1502 County-Controlled Facilities**

The County may retain under its exclusive control and possession certain facilities in the Airport Terminal Building. It is the intent of the County to use, at its discretion, any of the County-controlled facilities to accommodate: (i) airlines not requiring permanent facilities or airlines requiring temporary accommodation pending allocation of permanent facilities, and (ii) the needs of Signatory Airlines and Non-Signatory Airlines. Upon Airline's request, the County may grant to Airline the right to use, in common with other airlines, designated County-controlled facilities subject to Airline's payment of applicable fees.

**Section 1503 Emergency Accommodation**

The Airport Director reserves the right, after consultation with Airline's station management, to direct Airline to accommodate at its Gate

Position(s), not in use by Airline, the aircraft of another airline for the purpose of deplaning and/or enplaning passengers that cannot be accommodated at the other airline's own Gate Position(s) or at a County-Controlled Facility due to a diversion, an emergency, weather or an irregular operation. Airline may charge Accommodated Airline based upon the methodology described in Section 405.

**ARTICLE XVI: SUBORDINATION AND SAVINGS CLAUSE**

**Section 1601 Subordination**

This Agreement and all rights granted to Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation or assignment made at any time by County to secure Bonds and to the terms and conditions of the Bond Resolution, and County and Airline agree that to the extent permitted by authorizing legislation, the holders of the Bonds shall exercise any and all rights of County hereunder to the extent such possession enjoyment and exercise are necessary to insure compliance by Airline and County with the terms and provisions of this Agreement and the Bond Resolution.

**Section 1602 Resolution of Conflicts with Bond Resolution**

In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Bond Resolution, then the term and provision of the Bond Resolution shall control, and shall supersede the conflicting terms and provisions of this Agreement.

**ARTICLE XVII: GOVERNMENT INCLUSION**

**Section 1701 Federal and Other Governmental Authority Funds**

This Agreement shall be subordinate to the provisions of any existing or future agreements between County and the United States government, or other governmental authority, relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal funds or other governmental authority funds for the development of Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds.

**Section 1702 Nondiscrimination**

Each air carrier and air transportation company operating at the Airport shall conduct its operation, maintenance, improvement and use of the property and facilities at the airport so that no person, on the grounds of race, color or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person, on the grounds of race, color or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination. Each air carrier and air transportation company shall use the premises in compliance with all other requirements imposed by or pursuant to title 49, Code of Federal Regulations, department of transportation, subtitle A, office of the secretary, part 21, nondiscrimination in federally assisted programs of the department of transportation - effectuation of title VI of the Civil Rights Act of 1964, and as said regulations may be amended and all Milwaukee County rules and regulations, policies, procedures and ordinances in effect or as they may be amended from time to time.

**Section 1703 Affirmative Action**

Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure 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. Airline assures 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 subpart. The Airline assures that it will require that its covered sub-organizations provide assurances to the Airline that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**ARTICLE XVIII: MISCELLANEOUS PROVISIONS**

**Section 1801 Rights Non-Exclusive**

Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement (except in the Exclusive Use Premises) are "non-exclusive" and County reserves the right to grant similar privileges to other Scheduled Air Carriers, except to the extent that the granting of such similar privileges shall substantially interfere with Airline's rights, privileges and licenses granted hereunder.

**Section 1802 Aviation**

County reserves unto itself, its successors, and assigns for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport, including Airlines Premises, for navigation or flight in the said airspace for landing on, taking off from or operating on Airport.

**Section 1803 Height Limitations**

Airline expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Airline Premises to such a height so as to comply with Federal Aviation Regulations, Part 77, as such may be amended or replaced from time to time.

**Section 1804 Amendment**

This Agreement, together with the authorizing County ordinance, constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of the Agreement shall be binding unless the same is

in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

**Section 1805 Non-waiver of Rights**

No waiver of default by either party of any of the terms, covenants, and conditions herein 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.

**Section 1806 Severability**

If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the Agreement shall not be affected thereby.

**Section 1807 Governing Law**

This Agreement is to be read and construed in accordance with the laws of the State of Wisconsin. The parties hereto agree that any court of proper jurisdiction sitting in Milwaukee County, Wisconsin shall be the proper forum for any actions brought hereunder. This Agreement shall be construed under and in accordance with the laws of the State of Wisconsin except where state law shall be preempted by any rules, laws or regulations of the government of the United States of America.

**Section 1808 Compliance with Law**

Airline agrees to observe and comply with all applicable current and future Federal, State, County, and municipal laws, statutes, ordinances, and regulations, including such ordinances, resolutions, and rules and regulations as County may from time to time promulgate, amend or adopt relative to the use of any property owned by County, including the premises



that are the subject of this Agreement; provided, however, that Airline may, at its own risk, costs, and expense and at no cost to County, contest by appropriate judicial or administrative proceedings the applicability or the legal or constitutional validity of such law, statute, ordinance, resolution, rule or regulation.

**Section 1809 Agent for Service of Process**

It is expressly understood and agreed that if the Airline is not a resident of the State of Wisconsin, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation not licensed to do business in Wisconsin, then in any such event, Airline does designate the Secretary of State, State of Wisconsin, its agent for the purpose of service of process in any court action between it and the County arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Wisconsin for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Airline may be personally served with such process out of this State by the registered mailing of such complaint and process to the Airline at the address set forth herein. Any such service out of this State shall constitute valid service upon Airline as of the date of mailing to respond thereto.

**Section 1810 Non-liability of Agents and Employees**

No member, officer, agent, director, or employee of the County or Airline shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

**Section 1811 Independent Contractor**

Airline, its employers, and agents shall, at all times under this Agreement

act and perform as independent contractors. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of County and Airline.

**Section 1812 Successors and Assigns Bounds**

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

**Section 1813 Other Agreements**

Other than as set forth in Section 1902 hereof, nothing contained in this Agreement shall be deemed or construed to nullify, restrict or modify in any manner the provisions of any other lease or contract between County and Airline authorizing the use of the Airport, its facilities and appurtenances upon payment of rentals, fees and charges therein provided.

**Section 1814 Taxes, Assessments, and Licenses**

Airline shall at its own expense obtain all permits, licenses, approvals and certificates and pay all taxes, assessments, fees and charges required by any regulation or any law of the County, State of Wisconsin, the United States or other governmental body with regard to the business to be conducted by Airline on the Airport or within its Airline Premises pursuant to the terms of this Agreement.

**Section 1815 Approval by County**

Whenever this Agreement calls for approval by the County, such approval

shall be evidenced by the written approval of the Airport Director, the County Executive or the Director of Transportation and Public Works or his designee. Any approval required by either party to this Agreement shall not be unreasonably withheld or delayed.

**Section 1816 Conformity**

- (A) County covenants and agrees not to enter into any Agreement with or grant to any Scheduled Air Carrier which makes substantially similar use of the Airport, which operates substantially similar aircraft, and which utilizes substantially similar facilities to that of Airline, which contains more favorable terms than this Agreement, or to grant to any such Scheduled Air Carrier rights or privileges with respect to Airport which are not accorded to Airline hereunder unless the same terms rights, privileges and facilities are concurrently made available to Airline.
- (B) The provisions of Subsection 1816(A) shall not be construed to apply to any air service incentive program, or similar programs, that County may choose to offer, as allowed by applicable federal law, regulation or policy.

**Section 1817 Compliance by Other Tenants**

County shall, whenever possible, make reasonable efforts to obtain uniform compliance with its rules and regulations; however, County shall not be liable to Airline for any violation or non-observance of such rules and regulations by County or by any tenant, concessionaire or Scheduled Air Carrier at the Airport.

**Section 1818 Quiet Enjoyment**

Airline shall have quiet enjoyment of its Airline Premises, free from County interference, except to the extent and upon conditions set forth herein.

**Section 1819 County's Right of Entry**

Any authorized representative of the County shall have the right to enter upon any premises and facilities of the Airport at any reasonable time for the purpose of inspection or for any purpose incident to the performance of its obligations hereunder or in the exercise of any of its governmental functions. County will use its best efforts to give advance notice and to avoid disruption of Airline's operation.

**Section 1820 Force Majeure**

Except as herein provided, neither County nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations other than the payment of rentals, fees and charges hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control. Under no circumstances shall the happening of any event provided for in this Section 1821 excuse Airline from paying the rentals, fees and charges payable to County by Airline, pursuant to the terms of this Agreement during the term of this Agreement.

**Section 1821 Gender**

Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**Section 1822 Headings and Titles**

The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or

describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Section 1823 Incorporation of Exhibits**

All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

**Section 1824 Notices**

Notices required herein shall be given by registered or certified mail by depositing the same in the United States mail, postage prepaid or by hand delivery. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to County shall be delivered as follows:

Airport Director  
General Mitchell International Airport  
5300 South Howell Ave.  
Milwaukee, WI 53207-6189

Notices to Airline shall be in writing and mailed, registered or certified mail, postage prepaid or hand delivered, addressed to Airline at the following street address:

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

**Section 1825 Capacity to Execute**

County and Airline each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that party.

**Section 1826 Entire Agreement**

- (A) It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Airline that County and County's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Airline against County for, and County shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parole agreement with County being expressly waived by Airline and it being understood that the Charter of the County requires all agreements with the County to be in writing and adopted by ordinance.
- (B) The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.
- (C) The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

**Section 1827 Governmental Facilities**

It is expressly agreed that if funds for the provision, maintenance, and operation of the Control Tower, Instrument Landing System, Ground Control Approach and/or other air navigation aids or other facilities required or permitted by the United States and needed by Airline or Airline's operation at the Airport which are now or may hereafter be furnished by the United States are discontinued by the United States, County shall, following consultation with Airlines, furnish said aids, facilities, or services to the extent necessary to keep the airports operational and with costs for such facilities, services, and aids to be fully reimbursed pursuant to this Agreement.

**Section 1828 Rules and Regulations**

County shall have the right to and shall adopt and amend from time to time and enforce reasonable rules and regulations of general application, which Airline agrees to observe and obey, with respect to Airline's use of the Airport and its facilities, provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations, and orders of the Federal Aviation Administration (FAA) and other applicable governmental agencies and with the procedures prescribed or approved from time to time by the FAA or other applicable governmental agencies with respect to the operation of Airline's aircraft.

**Section 1829 Rights and Privileges Reserved by County**

County, in addition to any rights herein retained by it, reserves the following privileges, to wit:

- (A) The right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the Airline from erecting or permitting to be

erected any building or other structure on the Airport which, in the opinion of the County, would limit the usefulness of the Airport or constitute a hazard to aircraft.

- (B) The right during the time of war or national emergency to lease the Airport or any part thereof to the U.S. Government for military or naval use; and, if any such lease is executed, the privileges of this Agreement insofar as they are inconsistent with the privileges of the lease to the Government shall be suspended. If the foregoing shall occur, there shall be a reasonable and proportionate abatement of the rentals, fees, and charges provided herein during the period.
- (C) Subject to the provisions of Article VII relating to Airport Improvements, the right to make structural changes and other modifications to the Terminal Building as it sees fit and in the best interests of the County and the traveling public. Such changes and modifications shall be made in a manner compatible with the requisites of a proper and efficient operation of the Terminal Building and, if feasible, in such manner as to cause the airline companies using said Terminal Building as little inconvenience as possible. County agrees to consider the recommendations and requests of AAAC in future development of the Airport.

**Section 1830 Successors and Assigns Bound by Covenants**

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

**Section 1831 Airline's Election Not to Claim Depreciation or Investment Credit**

Airline irrevocably elects, on its own behalf and on behalf of all successors in interest under this Agreement, not to claim depreciation or an



investment credit with respect to any of the Airline Premises or any other leased property subject to this Agreement or any amendment hereof or supplement thereto.

**Section 1832      No Waiver**

Nothing contained in this Agreement is intended to nor shall it be construed as a waiver by Airline of any right to assert any defense or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to the Airline Deregulation Act (49 USC § 41713), of any state or local law, statute, regulation, or ordinance or any contract provision contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective proper officers and their corporate seals hereto affixed on the dates hereinafter set forth.

**COUNTY**

Dated at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**APPROVED:**

**MILWAUKEE COUNTY,  
a municipal corporation**

By \_\_\_\_\_  
Airport Director

By \_\_\_\_\_  
Director  
Transportation and Public Works

Date \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Corporation Counsel

By \_\_\_\_\_  
County Clerk

Date \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Risk Management

Date \_\_\_\_\_

**AIRLINE**

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_

a(n) \_\_\_\_\_ corporation

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

COUNTY

STATE OF WISCONSIN     )  
                                  )  ss  
MILWAUKEE COUNTY     )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-named \_\_\_\_\_, Director of Transportation and Public Works for Milwaukee County, to me known to be the person who executed the foregoing instrument on behalf of Milwaukee County, and acknowledged the same to be the free act and deed of said County made by its authority.

\_\_\_\_\_  
Notary Public, Milwaukee County, Wis.  
My commission expires: \_\_\_\_\_

STATE OF WISCONSIN     )  
                                  )  ss  
MILWAUKEE COUNTY     )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-named \_\_\_\_\_, County Clerk of Milwaukee County, to me known to be the person who executed the foregoing instrument on behalf of Milwaukee County, and acknowledged the same to be the free act and deed of said County made by its authority.

\_\_\_\_\_  
Notary Public, Milwaukee County, Wis.  
My commission expires: \_\_\_\_\_

