

AIRLINE-AIRPORT USE AND LEASE AGREEMENT

FOR

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

BY AND BETWEEN
LEE COUNTY PORT AUTHORITY
FT. MYERS, FLORIDA

AND

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LIST OF EXHIBITS

| <u>Exhibit</u> | <u>Title</u> |
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| Exhibit A | Airport Boundaries |
| Exhibit B | Airline Premises |
| Exhibit C | Summary of Terminal Areas |
| Exhibit D | Responsibilities of AUTHORITY and AIRLINE for Operation and Maintenance of the Terminal |
| Exhibit E | Sample Reporting Forms |
| Exhibit F | Changes in Rates for Rentals, Fees and Charges |

AIRLINE-AIRPORT USE AND LEASE AGREEMENT

THIS AIRLINE-AIRPORT USE AND LEASE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 200__, by and between the Lee County Port Authority hereinafter referred to as “AUTHORITY,” and _____, a corporation organized and existing under the laws of the State of _____ and authorized to do business in the State of Florida, hereinafter referred to as “AIRLINE.”

WITNESSETH:

WHEREAS, AUTHORITY has the custody, control and management of Southwest Florida International Airport (which, as it now exists or hereafter may be modified, extended, or expanded, is hereafter called the “Airport,” as set forth in Exhibit A attached hereto) under grant of authority by legislative act of Lee County, Florida, owner of the Airport, located in Lee County, State of Florida; and

WHEREAS, AUTHORITY has the legal and sole responsibility for the operation, maintenance, improvement and promotion of the Airport System, as that term is defined herein, in Lee County, Florida; and

WHEREAS, AUTHORITY has the right to lease, license, or otherwise provide for the use of land, property and facilities of the Airport System and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, AIRLINE is engaged in the business of transportation by air of persons, property, mail, parcels and/or cargo; and

WHEREAS, AIRLINE desires to lease certain premises, obtain certain rights, services and privileges in connection with the use of the Airport and its facilities, and AUTHORITY is willing to grant and lease the same to AIRLINE upon the terms and conditions hereinafter stated; and

WHEREAS, AIRLINE and AUTHORITY agree to enter into this Agreement, specifying the rights and obligations of the parties with respect to the use and occupancy of the Airport by AIRLINE;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein

contained, AUTHORITY and AIRLINE do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

ARTICLE 1: DEFINITIONS

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

1.01 Affiliate shall mean an Air Transportation Company that is (i) a parent or subsidiary of AIRLINE; or (ii) shares an International Air Transport Association (IATA) code with AIRLINE at the Airport (code-sharing partner); or (iii) otherwise operates under essentially the same trade name as AIRLINE at the Airport and uses essentially the same livery as AIRLINE; provided that no “major” airline (as defined by the FAA) shall be classified as an Affiliate of another “major” airline, unless either clause (i) or (iii) above defines the relationship between such airlines at the Airport. A Signatory Airline must designate in writing to the AUTHORITY any Air Transportation Company that will be an Affiliate of that Signatory Airline at the Airport. Affiliates shall have the rights afforded AIRLINE without payment of any additional charges or premiums, provided AIRLINE (a) remains a Signatory Airline to this Agreement; (b) agrees and shall be obligated to serve as a financial guarantor for all rentals, fees, and charges incurred by any Affiliate of AIRLINE at the Airport. AIRLINE shall be responsible for any and all unpaid rentals, fees, and charges of any such Affiliate while such Affiliate operates at the Airport.

1.02 Agreement shall mean this Airline-Airport Use and Lease Agreement between AUTHORITY and AIRLINE, as the same may be amended, modified or altered from time to time pursuant to the terms hereof.

1.03 Air Cargo Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues associated with those areas and facilities that are related to the air cargo activities at the Airport, including the air cargo aircraft parking apron.

1.04 Air Transportation Business shall mean that business operated by AIRLINE at the Airport for the commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.05 Air Transportation Company shall mean a legal entity engaged in the business of scheduled or non-scheduled commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.06 Airfield shall mean those portions of the Airport, excluding the Terminal Aircraft Aprons and the Cargo Aircraft Aprons, provided for the landing, taking off, and taxiing of aircraft, including without

limitation, approach and turning zones, clear zones, aviation or other easements, runways, a fully integrated taxiway system, runway and taxiway lights, and other appurtenances related to the aeronautical use of the Airport, including any property purchased for noise mitigation purposes, as set forth in Exhibit A and as may be revised from time to time.

1.07 Airfield Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for the Airfield.

1.08 AIRLINE shall mean the Air Transportation Company executing this Agreement.

1.09 Airline Premises shall mean those areas in the Terminal assigned to AIRLINE as Exclusive Use Premises, Preferential Use Premises, or Joint Use Premises, as defined herein, and shown in Exhibits B and C, attached hereto.

1.10 Airline Supported Cost Centers shall mean the Airfield Cost Center, Apron Cost Center, and the Terminal Cost Center.

1.11 Airport shall mean Southwest Florida International Airport, owned by Lee County, Florida and operated by AUTHORITY, under grant of authority by legislative act of Lee County, Florida, the boundaries of which are more particularly shown in Exhibit A, attached hereto, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned leased or operated by AUTHORITY.

1.12 Airport Affairs Committee (AAC) shall mean collectively the authorized representatives of each Signatory Airline which shall meet from time to time with representatives of AUTHORITY to receive information and provide input with regard to selected operation and development matters of the Airport.

1.13 Airport System shall mean all real property or any interest therein, including improvements thereto, structures, buildings, fixtures, and other personal property, which are located on the Airport, Page Field, Mitigation Park, or any airport hereafter owned, leased or operated by AUTHORITY.

1.14 Amortization shall mean the return on Recognized Net Investment made by AUTHORITY after

September 30, 2008 with its own AUTHORITY funds (excluding Bond proceeds; proceeds from insurance resulting from casualty damage to or destruction of improvements on the Airport System; federal or state grant funds; and PFC's) for new capital improvements or acquisitions on the Airport System equal to the total of the annual amortization of the amount of each item of Recognized Net Investment over its useful life in principal and interest amounts which together represent equal annual payments, with interest computed at AUTHORITY's interest cost. Amortization will commence in the Fiscal Year immediately following the Date of Beneficial Occupancy (DBO).

1.15 Apron Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for the Terminal Aircraft Apron immediately adjoining the Terminal for the purposes of transferring passengers between aircraft parked thereon and the Terminal.

1.16 AUTHORITY shall mean the Lee County Port Authority, a body politic and corporate, created by Special Act of the Legislature, Chapters 63-1541, Laws of Florida, and Chapters 125 and 322, Florida Statutes, and further implemented and authorized to exercise the powers outlined in those acts in 1990 by Lee County Ordinance No. 90-02, as amended and later codified and restated as Lee County Ordinance No. 01-014, adopted on September 10, 2001. The Authority is responsible for operations, management, and development of properties, facilities, and systems and personnel associated with air or sea transportation or commerce located in Lee County.

1.17 Aviation Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for those areas and facilities related to general aviation (GA), including any GA terminal facilities, fixed-base operator (FBO) facilities, fueling facilities, hangars, flight kitchens, and any other facilities for the purposes of supporting aviation-related activities.

1.18 Board shall mean the Board of Port Commissioners of Lee County, Florida.

1.19 Bond Resolution shall mean Resolution No. 92-08-48 adopted by the Board on August 26, 1992, as amended, restated, and supplemented.

1.20 Bonds shall mean the Lee County Florida Airport Revenue Bonds issued pursuant to the Bond Resolution.

1.21 Capital Expenditure shall mean an expenditure, equal to or greater than \$100,000, made to acquire, purchase or construct a single capital item or project for the purpose(s) of improving, maintaining or developing the Airport System, and shall include expenses incurred for development, study, analysis, review, design, or planning efforts.

1.22 Cargo Aircraft Aprons shall mean those areas of the Airport that are designated for the parking of cargo aircraft and support vehicles, and the loading and unloading of cargo aircraft, as shown in Exhibit A, attached hereto.

1.23 Common Use Premises shall mean those non-exclusive areas of the Airport (excluding Public Space), used in common by AIRLINE, along with other authorized users of the Airport, along with all facilities, improvements, equipment and services which are, or hereafter may be, provided for such common-use, as shown in Exhibits B and C, attached hereto.

1.24 Cost Centers shall mean those areas or functional activities of the Airport System used for the purposes of accounting for Revenues, O&M Expenses, Amortization, and Investment Service.

1.25 Coverage shall mean twenty-five percent (25%) of the Debt Service payable on Bonds in each Fiscal Year.

1.26 Debt Service shall mean any principal, interest, premium, and other fees and amounts either paid or accrued for Bonds, and such other accounts which may be established for payment of principal, interest, premium and other fees and amounts associated with Subordinated Indebtedness.

1.27 Debt Service Reserve Fund shall mean the fund created by the Bond Resolution for maintaining a balance equal to the maximum annual Debt Service on all outstanding Bonds.

1.28 Deplaned Passenger shall mean any passenger disembarking an aircraft at the Terminal, including any such passenger that shall subsequently board another aircraft of the same or a different Air Transportation Company or the same aircraft, previously operating under a different flight number.

1.29 Enplaned Passenger shall mean any passenger boarding an aircraft at the Terminal, including any such passenger that previously disembarked from another aircraft of the same or a different Air

Transportation Company or from the same aircraft, previously operating under a different flight number.

1.30 Exclusive Use Premises shall mean those portions of the Terminal assigned exclusively to AIRLINE, as shown in Exhibit B, attached hereto.

1.31 Executive Director shall be the Executive Director of AUTHORITY, and shall include such person or persons as may from time to time be authorized in writing by AUTHORITY or by the Executive Director or applicable law to act for the Executive Director with respect to any or all matters pertaining to this Agreement.

1.32 Extraordinary Coverage Protection shall mean those payments in the rentals, fees, and charges for Signatory Airlines at the Airport in any Fiscal Year in which the amount of Revenues, less O&M Expenses is projected to be less than the one hundred twenty-five percent (125%) of the annual Debt Service, as required by the Bond Resolution. Any amounts which must be collected for such Extraordinary Coverage Protection payments will be allocated to the Airfield Cost Center and the Terminal Cost Center on the basis of the Net Requirement of the Airfield Cost Center and the Terminal Cost Center.

1.33 FAA shall mean the Federal Aviation Administration, or its authorized successor(s).

1.34 Fiscal Year shall mean the annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve consecutive months, ending with the last day of September of any year.

1.35 Investment Service shall mean, with respect to any Fiscal Year, the sum of (1) Debt Service (exclusive of capitalized interest) and Other Debt Service payable by AUTHORITY in that Fiscal Year; plus (2) Coverage.

1.36 Joint Use Formula shall mean that formula which prorates twenty percent (20%) of the cost of a service or space as defined in Exhibit F, equally to all Signatory Airlines, and eighty percent (80%) allocated to all Signatory Airlines, based on the ratio of each Signatory Airline's Enplaned Passengers annually at the Airport. When determining the number of Scheduled Air Carriers sharing in the twenty percent (20%) portion of the Common Use Formula, all individual Scheduled Air Carriers that are Affiliates of a Signatory Airline shall be combined and considered a single Signatory Airline.

1.37 Joint Use Premises shall mean those Terminal areas which may be assigned to two or more Scheduled Air Carriers, as shown on Exhibit B and Exhibit C attached hereto.

1.38 Landing Fee shall mean a fee expressed in tenths of a cent per thousand pounds of the Maximum Gross Landed Weight of each type of AIRLINE's aircraft and shall be multiplied by the total of all Maximum Gross Landed Weight for all Chargeable Landings of each type of aircraft landed at the Airport by AIRLINE.

1.39 Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each aircraft operated at the Airport by AIRLINE as certificated by the FAA or its successor.

1.40 Net Requirement shall mean, with respect to the Terminal, the direct and indirect O&M Expenses for the Terminal and reserves therefore, plus its proportional share of Investment Service, plus Amortization, less reimbursements; with respect to the Airfield, the direct and indirect O&M Expenses for the Airfield and reserves therefore, plus its proportional share of Investment Service, plus Amortization, less Non-Airline Revenues of the Airfield Cost Center.

1.41 Nonaviation Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for those areas and facilities not directly related to aviation purposes, including, but not limited to, commercial buildings, U.S. Postal Service facilities, and various ground leases and facilities.

1.42 Non-Airline Revenues shall mean those rentals, fees and charges received by AUTHORITY from Airport System lessees, permittees, concessionaires, users, and patrons other than Scheduled Air Carriers.

1.43 Non-Revenue Landing shall mean any aircraft landing by AIRLINE at the Airport for a flight for which AIRLINE receives no revenue, and shall include irregular and occasional ferry or emergency flights, which shall include any flight, that after having taken off from the Airport and without making a landing at any other airport, returns to land at the Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

1.44 Operating Expenses (O&M Expenses) shall mean the current expenses, paid or accrued, for operation, maintenance, and ordinary current repairs of said Airport System and shall include, without limiting

the generality of the foregoing, insurance premiums, administrative expenses of the Authority relating solely to the Airport System, including engineering, architectural, legal, airport consultants, and accounting fees and expenses, and fees and expenses of the Trustee, and such other reasonable current expenses as shall be in accordance with sound accounting practice. O&M Expenses shall not include any allowance for depreciation or renewals or replacements or obsolescence of capital assets of the Airport System, or any operating expenses of Special Purpose Facilities buildings where the lessees thereof are obligated to pay such operating expenses.

1.45 Operating Expenditure Reserve Requirement (O&M Reserve Requirement) shall mean the Bond Resolution requirement that a reserve be created and maintained at an amount not more than one-fourth (1/4) of the annual budget then in effect for O&M Expenses.

1.46 Other Debt Service shall mean any principal, interest, premium, and other fees and amounts, either paid or accrued, on Other Indebtedness of AUTHORITY.

1.47 Other Indebtedness shall mean any debt incurred by AUTHORITY for Airport System purposes which is outstanding and not authenticated and delivered under and pursuant to the Bond Resolution, or any Subordinated Bond Resolution.

1.48 Passenger Facility Charge (PFC) shall mean the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended during the Term of this Agreement.

1.49 Preferential Use Premises shall mean those portions of the Terminal and Terminal Aircraft Aprons assigned to AIRLINE, as shown in Exhibits B and C, attached hereto, to which AIRLINE shall have priority over other users, subject to the provisions of Article 16.

1.50 Public Space shall mean all utility rooms, ductways, janitorial rooms and closets, stairways, hallways, elevators, escalators, entrance-ways, public or common use lobbies and areas, public toilet areas and other areas used for the operation, maintenance or security of the Terminal, even if used solely by AUTHORITY; as shown on Exhibit B, attached hereto.

1.51 Recognized Net Investment shall mean AUTHORITY's cost of an improvement, equal to or greater than \$100,000, or an acquisition made on or for the Airport System (including without limitation the cost of construction, testing, architects' and engineers' fees, consultants' fees, construction management fees,

inspection and surveillance by AUTHORITY engineer, condemnation, relocation expenses, brokers' fees), reduced by the amount of any federal or state grant or PFC received by AUTHORITY therefore, shall be considered Recognized Net Investment beginning in the Fiscal Year in which the improvement or acquisition is completed.

1.52 Rentable Square Feet with respect to the Terminal shall mean the number of square feet of space in the Terminal that is rentable to tenants, including office and administrative space used by AUTHORITY.

1.53 Revenue Fund shall mean that fund for the deposit of Revenues, as defined under the Bond Resolution, derived from the operation of the Airport System.

1.54 Revenue Landing shall mean any aircraft landing by AIRLINE at the Airport for which AIRLINE receives revenue, including flights diverted from another airport to the Airport due to meteorological reasons.

1.55 Revenues shall mean income accrued by AUTHORITY in accordance with generally accepted accounting practices, including investment earnings, from or in connection with the ownership or operation of the Airport System or any part thereof, or the leasing or use thereof.

1.56 Scheduled Air Carrier shall mean any Air Transportation Company performing or desiring to perform, pursuant to published schedules, seasonal or non-seasonal commercial air transportation services over specified routes to and from the Airport and holding the necessary authority from the appropriate federal or state agencies to provide such transportation.

1.57 Signatory Airline shall mean an Air Transportation Company that leases a minimum of one (1) gate, one (1) ticket counter position, and other space in the Terminal deemed sufficient by the Executive Director to support its operation, provided that the total of Terminal space is at least 4,000 square feet, and has an agreement with AUTHORITY substantially similar to this Agreement. An Affiliate of a Signatory Airline, as defined herein, will be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein.

1.58 Subordinated Indebtedness shall mean any bonds or other financing instrument or obligation subordinate to the Bonds, issued pursuant to any Subordinated Bond Resolution.

1.59 Subordinated Bond Resolution shall mean a Bond Resolution subordinated to the Bond Resolution authorizing the issuance by AUTHORITY of Subordinated Indebtedness, as such may be supplemented or amended from time to time.

1.60 Substantial Completion shall mean the date on which AUTHORITY's architects and/or engineers certify any premises at the Airport to be substantially complete as to permit use and occupancy by AIRLINE, or the date AIRLINE actually takes occupancy of the premises, whichever comes first.

1.61 Surplus Fund shall mean that fund created by the Bond Resolution.

1.62 TSA shall mean the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

1.63 Term shall mean the period of time during which AIRLINE's activities at the Airport shall be governed by this Agreement. Said Term shall begin on the Effective Date as defined in Section 2.01, and, except as otherwise set forth herein, terminate on the date set forth in Article 3.

1.64 Terminal Aircraft Aprons shall mean those areas of the Airport that are designated for the parking of passenger aircraft and support vehicles, and the loading and unloading of passenger aircraft.

1.65 Terminal shall mean the passenger terminal building, as set forth in Exhibit A, attached hereto.

1.66 Terminal Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for all passenger Terminal facilities, and other related and appurtenant facilities, whether owned, operated, or maintained by the Authority, an airline, or another tenant; and a portion of the enplanement and deplanement roadways in front of the Terminal.

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

Article 2: Effective Date and Transition Provisions

2.01 Effective Date. This Agreement, along with the determination of rentals, fees, and charges set forth herein, shall be effective on October 1, 2008.

2.02 Cancellation of Prior Agreements. At the Effective Date, the Amended and Restated Airport Use Agreement between AIRLINE and AUTHORITY shall terminate.

ARTICLE 3: TERM

This Agreement shall commence October 1, 2008 and terminate at midnight on September 30, 2013, unless canceled sooner as provided herein.

ARTICLE 4: PREMISES

4.01 Airline Premises.

A. AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, the Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth in Exhibits B and C.

B. Any changes to Airline Premises, except as set forth herein relating to "as-built" drawings, shall be evidenced by an amendment to this Agreement pursuant to Section 18.18.

C. In the event that changes to Exhibits B, C, or D are made to reflect changes in the leased premises of others, or to reflect other space changes in public-use and common-use areas, then in such event said revised exhibits may be substituted herein without the necessity for amendment of this Agreement.

4.02 Terminal Equipment. Terminal equipment owned or acquired by AUTHORITY for use by AIRLINE shall remain the property and under the control of AUTHORITY.

4.03 Employee Parking. AUTHORITY will make reasonable efforts to make available area(s) at the Airport for vehicular parking for AIRLINE's personnel employed at the Airport; provided, however, such area(s) shall not be used for the storage of vehicles or trailers; and usage of the area(s) is subject to Section 7.05B and to reasonable and non-discriminatory rules and regulations established by AUTHORITY.

4.04 Federal Inspection Facilities. AUTHORITY shall designate areas in the Terminal, or elsewhere on the Airport, to be used by agencies of the United States for the inspection of international passengers and their baggage, and for the exercise of the responsibilities of said agencies with respect to the movement of persons, property, and cargo to and from the United States.

4.05 Transfer of Operations

A. In the event new or expanded facilities are developed at the Airport, AUTHORITY shall give notice to affected Air Transportation Company of the estimated Substantial Completion date at least one

hundred and eighty (180) days prior thereto. The affected Air Transportation Company shall have the right to install in its Exclusive Use Premises and Preferential Use Premises its own equipment and furnishings sixty (60) days prior to the estimated date of Substantial Completion or such other date as may be agreed to by the parties subject to the provisions of Section 9.01, herein; provided, however, no such equipment and furnishings shall be installed in Preferential Use Premises without the written consent of AUTHORITY, which consent will not be unreasonably withheld.

B. The affected Air Transportation Company shall begin its operations from its new or expanded Airline Premises on the date of Substantial Completion thereof.

ARTICLE 5: USE OF THE AIRPORT AND RELATED FACILITIES

5.01 AIRLINE Rights and Privileges. In addition to all rights granted elsewhere in this Agreement, AIRLINE shall have the right to use, in common with others so authorized by AUTHORITY, areas, other than areas leased exclusively or preferentially to others, facilities, equipment, and improvements at the Airport for the operation of AIRLINE's Air Transportation Business and all activities reasonably necessary to such operations, including but not limited to:

A. The landing, taking off, flying over, taxiing, towing, and conditioning of AIRLINE's aircraft and, in areas designated by AUTHORITY, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of AIRLINE's aircraft and support equipment subject to Paragraphs 5.01F, 5.01G, and 5.02C, and to the availability of space, and subject to such reasonable charges and regulations as AUTHORITY may establish; provided, however, AIRLINE shall not permit the use of the Airfield by any aircraft operated or controlled by AIRLINE which exceeds the design strength or capability of the Airfield 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.

B. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.

C. The training of personnel in the employ of or to be employed by AIRLINE and the testing of aircraft and other equipment being utilized at the Airport in the operation of AIRLINE's Air Transportation Business; provided, however, said training and testing shall be incidental to the use of the Airport in the operation by AIRLINE of its Air Transportation Business and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. AUTHORITY reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by AUTHORITY.

D. The sale, disposition, or exchange of AIRLINE's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, or other similar equipment or supplies; provided, however, AIRLINE shall not sell or permit to be sold aviation fuels or propellants except (i) to such Air Transportation Company

which is a successor company to AIRLINE, (ii) for use in aircraft of others which are being used solely in the operation of AIRLINE's Air Transportation Business, including, but not limited to, AIRLINE's code sharing partner(s), or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from AIRLINE.

E. The purchase at the Airport or elsewhere, of fuels, lubricants, and any other supplies and services, from any person or company, subject to Paragraph 5.01D and to AUTHORITY's right to require that each provider of services and/or supplies to AIRLINE secures a permit from AUTHORITY to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases; provided, however, nothing herein shall be construed to permit AIRLINE to store aviation fuels at the Airport. Fuel tenders are prohibited on Terminal Aircraft Aprons serviced by the fuel hydrant system except by separate authorization of AUTHORITY. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

F. The servicing by AIRLINE or its suppliers of aircraft and other equipment being utilized at the Airport by AIRLINE on the Terminal Aircraft Aprons or such other locations as may be designated by the Executive Director.

G. The loading and unloading of persons, property, cargo, parcels and mail by motor vehicles or other means of conveyance reasonably approved by AUTHORITY on or at Terminal Aircraft Aprons or such other locations as may be designated by the Executive Director; provided AIRLINE shall not use Terminal Aircraft Aprons immediately adjacent to the passenger terminal to load or unload all-cargo aircraft unless otherwise authorized in writing by AUTHORITY.

H. The provision, either alone or in conjunction with other Air Transportation Companies or through a nominee, of porter/skycap service for the convenience of the public, at no cost to AUTHORITY.

I. The installation and maintenance, at AIRLINE's sole cost and expense, of identifying signs in AIRLINE's Exclusive Use Premises. Installation shall be subject to the prior written approval of the Executive Director and shall comply with the procedures in the AUTHORITY's Leasehold Development Standards. The general type and design of such signs shall be compatible with and not detract from the

pattern and decor of the Terminal areas. Nothing herein shall be deemed to prohibit AIRLINE's installation on the walls behind ticket counters, inside baggage service offices, and on the exterior of loading bridges associated with preferentially assigned passenger boarding gates, of identifying and company logo signs as are customarily installed by AIRLINE in such areas at comparable airport facilities, subject to the prior written approval of AUTHORITY. However, AIRLINE shall not install any promotional displays or advertising displays in its Airline Premises unless authorized in writing, in advance, by the AUTHORITY.

J. The installation, maintenance, and operation, at no cost to AUTHORITY, of such radio communication, company telephone system, computer, meteorological and aerial navigation equipment, and facilities on AIRLINE's Exclusive Use Premises and Preferential Use Premises as may be necessary or convenient for the operation of its Air Transportation Business; provided, however, that except for equipment and facilities already in place, such installations shall be subject to the prior written approval of the Executive Director. Prior to any written approval, AIRLINE shall provide the Executive Director with all necessary supporting documentation related to such installations. AIRLINE recognizes that AUTHORITY has installed airline-compatible multiuser flight information display systems and AIRLINE shall diligently proceed to use such systems.

K. The use of designated airline cable trays, raceways, and rights of way as may reasonably be required by AIRLINE for communications, computer equipment, teletype, telephone, interphone, conveyor systems and power, and other transmission lines in areas exclusively and preferentially-leased by AIRLINE, subject to the availability of space and/or ground areas as determined by the Executive Director. AUTHORITY reserves the right to require the execution of a separate agreement between AUTHORITY and AIRLINE for the lease and use of such space and/or ground area outside Terminal areas or to provide such service directly to AIRLINE.

L. The installation of personal property, including furniture, furnishings, supplies, machinery, and equipment, in AIRLINE's Exclusive Use Premises and Preferential Use Premises, as AIRLINE may deem necessary, useful 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.

M. The construction of modifications, finishes, and improvements in Airline Premises as AIRLINE may deem necessary or prudent for the operation of its Air Transportation Business, subject to the provisions of Section 9.01.

N. AIRLINE shall have the right to ingress to and egress from the Airport and Airline Premises for AIRLINE's officers, employees, agents, and invitees, including passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such right shall be subject to CFR Part 1542, applicable laws, and the AUTHORITY's right in accordance with its applicable law to establish reasonable and nondiscriminatory Rules and Regulations and Operating Directives as set out in Section 18.08 governing (i) the general public, including AIRLINE's passengers, and, (ii) access to non-public areas at the Airport by AIRLINE's employees, suppliers of materials, and furnishers of services; provided, however, any such Rules and Regulations and Operating Directives of AUTHORITY shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business. AUTHORITY may at any time temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway or access to the Airport, so long as a means of ingress and egress reasonably equivalent is concurrently made available to AIRLINE. AIRLINE hereby releases and discharges AUTHORITY from any and all claims, demands, or causes of action which AIRLINE may now or at any time hereafter have arising or alleged to arise out of such a closing or re-routing.

O. Nothing in this paragraph shall prohibit AIRLINE from (i) providing food and beverages, at AIRLINE's sole cost and expense, or installing or maintaining vending machines in its non-public Exclusive Use Premises for the sole use of AIRLINE's employees, the type, kind, and locations subject to the prior written approval of the Executive Director and (ii) providing under a separate agreement with AUTHORITY for its own flight kitchen for catering services to its passengers and crews for consumption aboard aircraft or (iii) from entering into a separate agreement for the sale of food and beverage in a "VIP room" or similar private club at the Airport.

P. The rights and privileges granted to AIRLINE pursuant to this Article 5 may be exercised on behalf of AIRLINE by other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport, subject to all laws, rules, regulations, fees and charges and Article 7 and Article 15 as may be applicable to the activities undertaken.

Q. AIRLINE may exercise on behalf of any other Air Transportation Company having an operating agreement or permit with AUTHORITY 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 the provisions of Article 7, Article 15, and other provisions of this Agreement.

5.02 Exclusions and Reservations.

A. Nothing in this Article 5 shall be construed as authorizing AIRLINE to conduct any business separate and apart from the conduct of its Air Transportation Business.

B. AIRLINE shall not knowingly interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport.

C. As soon as possible after release from proper authorities, AIRLINE shall remove any of its disabled aircraft from the Airfield or Terminal Aircraft Aprons, shall place any such disabled aircraft only in such storage areas as may be reasonably designated by the Executive Director, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by AUTHORITY; provided, however, AIRLINE shall be requested to remove such disabled aircraft from the Terminal Aircraft Apron(s) only if deemed necessary in accordance with Article 16. In the event AIRLINE shall fail to remove any of its disabled aircraft as expeditiously as possible, AUTHORITY may, but shall not be obligated to, cause the removal of such disabled aircraft. AIRLINE shall pay to AUTHORITY, upon receipt of invoice, the costs incurred for such removal plus ten percent (10%). Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to Section 12.01B.

D. AIRLINE shall not knowingly do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If AIRLINE shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in AUTHORITY's insurance premiums, AIRLINE shall immediately remedy such actions and/or pay the increase in premiums, upon notice from AUTHORITY to do so.

E. AIRLINE shall not maintain or operate in the Terminal or elsewhere at the Airport a cafeteria, restaurant, bar, or cocktail lounge for the purpose of selling food and beverages to the public or to AIRLINE's employees and passengers, except as may be permitted under 5.01O, above.

F. AUTHORITY may, at its sole option, install or cause to be installed advertising and revenue generating devices, including vending machines, in Preferential Use Premises, Joint Use Premises, or Common Use Premises provided, however, that such installations shall not unreasonably interfere with AIRLINE's operations authorized hereunder or substantially diminish the square footage contained in Airline Premises. AUTHORITY may also, at its sole option, install pay telephones in any part of the Terminal not exclusively leased to AIRLINE. AUTHORITY shall be entitled to reasonable access upon Airline Premises to install or service such telephones and devices. Income generated by such telephones and devices shall be accounted for in the same manner as other non-airline revenues of the Airport System.

G. The rights and privileges granted AIRLINE pursuant to this Article 5 shall be subject to any and all reasonable and nondiscriminatory Rules and Regulations and Operating Directives established by AUTHORITY, and provided to AIRLINE, as the same may be amended from time to time, and to the provisions of Article 7.

H. AIRLINE will ensure that its employees are properly trained in the operation and use, including safety measures, of AUTHORITY-owned loading bridges, preconditioned air units, ground power units, or any other tenant equipment utilized by AIRLINE.

I. AIRLINE will also ensure that employees operating or using AUTHORITY's baggage handling system have received AUTHORITY-conducted training and have been issued AUTHORITY certification for the operation and use thereof. Such certification will at all times be displayed on the respective employee's airport identification badge or in such fashion as the AUTHORITY may require.

J. 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 AUTHORITY.

ARTICLE 6: OPERATION AND MAINTENANCE OF THE AIRPORT

6.01 Designation of Operation and Maintenance Responsibilities. In addition to the obligations of AIRLINE and AUTHORITY set forth in this Article 6, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

6.02 AUTHORITY Obligations.

A. AUTHORITY shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a first class manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be AIRLINE's obligation pursuant to Section 6.03 and Exhibit D.

B. AUTHORITY shall, to the extent it is legally able so to do, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by AIRLINE.

C. AUTHORITY shall not be liable to AIRLINE for temporary failure to furnish all or any of such services to be provided in accordance with this Section 6.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by AUTHORITY's negligence or any other cause beyond the reasonable control of AUTHORITY.

D. AUTHORITY shall maintain (i) loading bridges owned by AUTHORITY; (ii) preconditioned air systems owned by AUTHORITY; (iii) associated aircraft ground power units owned by AUTHORITY; (iv) potable water cabinets owned by AUTHORITY, provided however that AIRLINE shall be responsible for maintaining water hoses associated with the potable water cabinets; (v) baggage conveyors owned and installed by AUTHORITY ; (vi) lightning detection systems; and (vii) other systems that may be acquired by AUTHORITY in the future.

E. AUTHORITY shall, in the operation of the Airport, comply with all local, state and federal laws, rules and regulations.

6.03 AIRLINE Obligations.

A. AIRLINE shall, at all times, preserve and keep Airline Premises in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from AIRLINE's operations, provided, however, this requirement shall not be construed to mean AIRLINE shall have janitorial responsibilities designated to be those of AUTHORITY pursuant to Exhibit D.

B. AIRLINE shall keep, at its own expense, its preferentially assigned Terminal Aircraft Aprons free of fuel, oil, debris, and other foreign objects.

C. AIRLINE shall operate and maintain at its own expense any improvements and/or equipment installed by AIRLINE for the exclusive use of AIRLINE.

D. Should AIRLINE fail to perform its material obligations hereunder, AUTHORITY shall have the right to enter the Airline Premises and perform such activities; provided, however, other than in a case of emergency, AUTHORITY shall give AIRLINE reasonable advance written notice of non-compliance, not to exceed ten (10) days, prior to the exercise of this right. If such right is exercised, AIRLINE shall pay AUTHORITY, upon receipt of invoice, the cost of such services plus ten percent (10%). Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to Section 12.01B.

ARTICLE 7: RENTALS, FEES, AND CHARGES

AIRLINE shall pay AUTHORITY rentals for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted hereunder during the Term of this Agreement. The rentals, fees, and charges payable by all Signatory Airlines for the Airfield and, with respect to the Terminal, the rentals, fees, and charges payable by Signatory Airlines leasing space in the Terminal, shall be equal to the Signatory Airlines' share of the Net Requirement in each respective area of the Airport, all as set forth in Exhibit F.

7.01 Landing Fees. AIRLINE shall pay monthly to AUTHORITY fees for Revenue Landings for the preceding month. AIRLINE's Landing Fees shall be determined as the product of the Landing Fee rate for the period, calculated in accordance with Exhibit F, attached hereto, and AIRLINE's total landed weight for the month. AIRLINE's landed weight for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landed Weight of each type of AIRLINE's aircraft by the number of Revenue Landings of each said aircraft during such month.

7.02 Terminal Rentals.

A. For the Term of this Agreement, AIRLINE's Terminal rentals shall be determined as the sum of AIRLINE's rentals for Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises. AIRLINE's rental payment for Exclusive Use Premises and Preferential Use Premises shall be determined as the sum of the products obtained by multiplying the rental rate for the period, calculated in accordance with Exhibit F, by the amount of the corresponding type of space leased by AIRLINE as Exclusive Use Premises and Preferential Use Premises as set forth in Exhibits B and C.

B. Total Terminal rentals for Joint Use Premises shall be calculated as the product of the appropriate differential Terminal rental rates for the period calculated in accordance with Exhibit F, and the amount of each category of Joint Use Premises. AIRLINE's share of the total Terminal rentals due each month for Joint Use Premises shall be determined in accordance with the Joint Use Formula.

C. For inclusion in the Joint Use Formula, AIRLINE shall include in its monthly report of Enplaned Passengers and Deplaned Passengers the total number of Enplaned Passengers and Deplaned Passengers handled or otherwise accommodated by AIRLINE for other Air Transportation Companies not having an agreement with AUTHORITY that provides for the direct payment to AUTHORITY of appropriate charges for the use of Joint Use Premises.

7.03 Extraordinary Service Charges. Throughout the Term of the Agreement, AIRLINE shall pay extraordinary service charges, if applicable as evidenced by extraordinary service charge authorizations executed by AIRLINE for such extraordinary additional equipment and services provided by AUTHORITY for AIRLINE's use. AIRLINE's charges for AUTHORITY purchased Terminal equipment shall be as set forth in a separate agreement with AUTHORITY.

7.04 Aircraft Parking Charges. AIRLINE shall pay reasonable and non-discriminatory aircraft parking charges as set forth in Exhibit F for aircraft remotely parked for extended periods of time on areas other than the Terminal Aircraft Aprons.

7.05 Other Fees and Charges.

A. AUTHORITY expressly reserves the right to assess and collect the following:

(1) Reasonable and non-discriminatory fees for services provided by AIRLINE for any other Air Transportation Companies, or for AIRLINE by any other Air Transportation Companies, if such services or concessions would otherwise be available from a concessionaire, licensee, or permittee of AUTHORITY. Provided, however, if such other Air Transportation Company is an Affiliate of AIRLINE, such fees for services shall not apply. Fees for the provision of such services are identified in the AUTHORITY's Ground Handling Agreements for service providers.

(2) Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by AUTHORITY or its contractors and utilized by AIRLINE, including, but not limited to, special maintenance of Airline Premises, equipment, vehicle storage and service areas, Federal Inspection Services (FIS) facility fees, and remote ramp aircraft parking fee.

(3) Pro rata shares of any charges for the provision of any services or facilities which AUTHORITY is required or mandated to provide by any governmental entity (other than AUTHORITY acting within its proprietary capacity) having jurisdiction over the Airport.

B. AUTHORITY reserves the right to charge AIRLINE or its employees a reasonable and non-

discriminatory fee based on AUTHORITY's cost of providing services and facilities for the employee parking area(s) provided at the Airport. Should AUTHORITY elect to charge such a fee for employee parking, it may do so by first notifying AIRLINE in writing and without formal amendment to this Agreement.

C. AIRLINE shall pay all applicable sales, use, intangible and ad valorem taxes of any kind, assessed against Airline Premises, the real property and any improvements thereto or leasehold estate created herein, or which result from AIRLINE's occupancy or use of Airline Premises whether levied against AIRLINE or AUTHORITY. AIRLINE shall also pay any other taxes or assessments against Airline Premises or leasehold estate created herein. AIRLINE may reserve the right to contest such taxes and withhold payment of such taxes upon written notice to AUTHORITY of its intent to do so, so long as the nonpayment of such taxes does not result in a lien against the real property or any improvements thereon or a direct liability on the part of AUTHORITY. AUTHORITY agrees to immediately forward to AIRLINE any notices of such taxes and assessments due upon receipt of same.

D. AIRLINE shall pay Extraordinary Coverage Protection payments in the rates for rentals, fees, and charges at the Airport in any Fiscal Year in which the amount of Revenues less O&M Expenses and the O&M Reserve Requirement is projected to be less than one hundred twenty-five percent (125%) of the Debt Service requirement. Any amounts which must be collected for such Extraordinary Coverage Protection payments will be allocated to the Airfield Cost Center and the Terminal Cost Center on the basis of the Net Requirement of the Airfield Cost Center and the Terminal Cost Center.

7.06 Information to be Supplied by AIRLINE.

A. Not later than ten (10) days after the end of each month, AIRLINE shall file with AUTHORITY separate written reports on forms provided by AUTHORITY and included as samples in Exhibit E, attached hereto, for activity conducted by AIRLINE during said month, and for activity handled by AIRLINE for each Air Transportation Company not having an agreement with AUTHORITY providing for its own submission of activity data to AUTHORITY. Such activity reporting shall include, but not be limited to operations, revenue and non-revenue Enplaned Passengers, Deplaned Passengers, connecting passengers, through-passengers, and pounds of cargo, mail, and express shipments.

B. AUTHORITY shall have the right to rely on said activity reports in determining rentals and charges due hereunder. AIRLINE shall have full responsibility for the accuracy of said reports.

Payment deficiencies due to incomplete or inaccurate activity reports shall be subject to interest charges as set forth in Paragraph 7.07D.

C. AIRLINE shall at all times maintain and keep records reflecting the activity statistics of AIRLINE's activities at the Airport to be reported pursuant to Paragraph 7.06A. Such records shall be retained by AIRLINE for a period of three (3) years subsequent to the activities reported therein, or such other retention period as set forth in FAR Part 249, and upon prior written notice to AIRLINE shall be made available at Ft. Myers, Florida for audit and/or examination by AUTHORITY or its duly authorized representative during all normal business hours. AIRLINE shall produce such books and records at Ft. Myers, Florida within thirty (30) calendar days of AUTHORITY's notice to do so or pay all reasonable expenses, including but not limited to transportation, food, and lodging, necessary for an auditor selected by AUTHORITY to audit said books and records.

D. The cost of audit, with the exception of the aforementioned expenses, shall be borne by AUTHORITY; provided, however, the total cost of said audit shall be borne by AIRLINE if either or both of the following conditions exist:

(1) The audit reveals an underpayment of more than ten percent (10%) by category of rentals, fees, and charges due on an annual basis hereunder, as determined by said audit;

(2) AIRLINE has failed to maintain true and complete records in accordance with Paragraph 7.06C.

7.07 Payments.

A. Payments of one-twelfth (1/12) of the total annual rentals for AIRLINE's Exclusive Use Premises, and Preferential Use Premises shall be due in advance, without demand or invoice, on the first day of each month. Said rentals and charges shall be deemed delinquent if payment is not received by the tenth (10) day of the month.

B. Payment of AIRLINE's Landing Fees shall be due fifteen (15) days from AUTHORITY's issuance of invoice, and shall be deemed delinquent if not received within ten (10) days of the due date.

C. Payment for all other fees and charges due hereunder, shall be due as of the due date stated on

AUTHORITY's invoice. Said fees and charges shall be deemed delinquent if payment is not received within thirty (30) days of the stated date of such invoice.

D. AUTHORITY shall provide notice of any and all payment delinquencies, including payments of any deficiencies which may be due as a result of AUTHORITY's estimates of activity pursuant to Paragraph E below, or due to an audit performed pursuant to Paragraph 7.06C, herein; provided, however, interest at the rate of eighteen percent (18%) per annum shall accrue against any and all delinquent payment(s) from the due date until the date payments are received by AUTHORITY. This provision shall not preclude AUTHORITY from canceling this Agreement for default in the payment of rentals, fees, or charges, as provided for in Section 12.01B herein, or from exercising any other rights contained herein or provided by law.

E. In the event AIRLINE fails to submit its monthly activity reports as required in Paragraph 7.06A, AUTHORITY shall estimate the rentals, fees, and charges based upon the highest month of the previous twelve (12) month's activity reported by AIRLINE and issue an invoice to AIRLINE for same. If no activity data is available, AUTHORITY shall reasonably estimate such activity and invoice AIRLINE for same. AIRLINE shall be liable for any deficiencies in payments based on estimates made under this provision; payment for said deficiencies shall be deemed due as of the date such rental fee or charge was due and payable.

F. In the event AIRLINE's obligations with respect to Airline Premises or rights, licenses, or privileges granted hereunder shall commence or terminate on any date other than the first or last day of the month, AIRLINE's rentals, fees, and charges shall be prorated on the basis of the number of days such premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

G. All payments due and payable hereunder shall be paid in lawful money of the United States of America, without set off, by check made payable to AUTHORITY and delivered to:

Via Wire Transfer

Bank of America
13099 US 41 SE
Fort Myers, FL 33907
ABA #063100277
Account Name: Lee County BOCC-Airport Revenue
Account # 005500504580

Via U.S. Mail

Lee County Port Authority
11000 Terminal Access Road
Suite 8671
Fort Myers, FL 33913-8213

7.08 Security for Performance.

A. Unless AIRLINE has provided regularly scheduled flights to and from the Airport during the eighteen (18) months prior to the Effective Date of this Agreement, as defined in Article 2, without the occurrence of any act or omission that would have been an event enumerated in Section 12.01 of this Agreement, AIRLINE shall provide AUTHORITY on the Effective Date of this Agreement, as defined in Article 2, with a contract bond, irrevocable letter of credit or other similar security acceptable to AUTHORITY (“Contract Security”) in an amount equal to the estimate of three (3) months’ rentals, fees and charges payable by AIRLINE.. AIRLINE shall be obligated to maintain such Contract Security in effect until the expiration of eighteen (18) consecutive months during which period AIRLINE commits no event enumerated in Section 12.01 of this Agreement. Such Contract Security shall be in a form and with a company reasonably acceptable to AUTHORITY and licensed to do business in the State of Florida. In the event that any such Contract Security shall be for a period less than the full period required by this Paragraph 7.08A or if Contract Security shall be canceled, AIRLINE shall provide a renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation.

B. In the event AUTHORITY is required to draw down or collect against AIRLINE’s Contract Security for any reason, AIRLINE shall, within ten (10) business days after AUTHORITY’s written demand, take such action as may be necessary to replenish the existing Contract Security to its original amount (three months’ estimated rentals, fees, and charges) or to provide additional or supplemental Contract Security from another source so that the aggregate of all Contract Security is equal to three months’ estimated rentals, fees, and charges payable by AIRLINE pursuant to this Article 7.

C. Notwithstanding the above Paragraph 7.08A, AUTHORITY shall have the right in its sole discretion to waive such Contract Security requirements for a Signatory Airline which has not provided regularly scheduled flights at and from the Airport during the eighteen (18) months prior to the Effective Date of its Signatory Airline Agreement. Any such waiver by AUTHORITY shall be conditioned upon said Signatory Airline having provided regularly scheduled flights at six (6) other airports with activity levels and characteristics similar to the Airport during the most recent eighteen (18) month period, without committing any material default under the terms of the respective lease and use agreements at each of the six (6) facilities, and without a pattern of untimely payments for rentals, fees and charges. The burden shall be on AIRLINE to demonstrate to AUTHORITY its compliance with these

requirements at the six (6) other airports.

D. In addition to the foregoing, upon the occurrence of any AIRLINE act or omission that is an event enumerated in Section 12.01, or upon AIRLINE's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984 or any successor statute, as such may be amended, supplemented, or replaced, AUTHORITY, by written notice to AIRLINE given at any time within ninety (90) days of the date such event becomes known to AUTHORITY, may impose or reimpose the requirements of Paragraph 7.08A on AIRLINE. In such event, AIRLINE shall provide AUTHORITY with the required Contract Security within ten (10) days from its receipt of such written notice and shall thereafter maintain such Contract Security in effect until the expiration of a period of eighteen (18) consecutive months during which AIRLINE commits no additional event enumerated in Section 12.01 or the termination of bankruptcy proceedings, whichever is later.

E. If AIRLINE shall fail to obtain and/or keep in force such Contract Security required hereunder, such failure shall be grounds for immediate cancellation of this Agreement pursuant to Section 12.01. AUTHORITY'S rights under this Section 7.08 shall be in addition to all other rights and remedies provided to AUTHORITY under this Agreement.

F. AIRLINE and AUTHORITY agree that this Agreement constitutes an 'executory contract' for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 USC) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Furthermore, AIRLINE and AUTHORITY agree that any Contract Security provided by AIRLINE are not 'property of the estate' for purposes of Section 541 of the United States Bankruptcy Code (Title 11 USC), it being understood that any Contract Security is property of the third party providing it (subject to AUTHORITY's ability to draw against the Contract Security) and that all PFCs collected by AIRLINE with respect to Enplaned Passengers at the Airport, are property of AUTHORITY.

7.09 No Further Charges. Except as provided in this Agreement, or as may be permitted by any governmental entity (other than AUTHORITY, acting within its proprietary capacity) having jurisdiction over the Airport, no further rentals, fees, or charges shall be charged against or collected from AIRLINE, its passengers, its shippers and receivers of freight, its suppliers of material, its contractors or furnisher of services, by AUTHORITY, acting in its capacity as Airport proprietor, for the premises, facilities, rights, licenses, and privileges granted to AIRLINE herein.

ARTICLE 8: CHANGES IN RATES FOR RENTALS, FEES, AND CHARGES

8.01 Annual Rate Changes.

A. No later than sixty (60) days prior to the end of each Fiscal Year, AUTHORITY shall notify AIRLINE of the proposed schedule of rates for rentals, fees, and charges for the ensuing Fiscal Year. Said rates shall be determined and presented to AIRLINE substantially in conformance with the methods and format set forth in Exhibit F, attached hereto.

B. The Signatory Airlines through its AAC shall have the right to review and comment upon the proposed operating and capital budget. No later than thirty (30) days after the forwarding of the proposed schedule of rates for rentals, fees, and charges, AUTHORITY agrees to meet with the AAC at a mutually convenient time for the purpose of discussing such rentals, fees, and charges. In advance of said meeting, AUTHORITY shall make available to the AAC any reasonably requested additional information relating to the determination of the proposed rates. AUTHORITY agrees to fully consider the comments and recommendations of the Signatory Airlines prior to finalizing its schedule of rates for rentals, fees, and charges for the ensuing Fiscal Year.

C. Following said meeting, and prior to the end of the then current Fiscal Year, AUTHORITY shall notify AIRLINE of the rates for rentals, fees, and charges to be established for the ensuing Fiscal Year.

D. If calculation of the new rates for rentals, fees, and charges is not completed by AUTHORITY and the notice provided in Paragraph 8.01C is not given on or prior to the end of the then current Fiscal Year, the rates for rentals, fees, and charges then in effect shall continue to be paid by AIRLINE until such calculations are concluded and such notice is given. Upon the completion of such calculations and the giving of such notice, AUTHORITY shall determine the difference(s), if any, between the actual rentals, fees, and charges paid by AIRLINE to date for the then current Fiscal Year and the rates for rentals, fees, and charges that would have been paid by AIRLINE if said rates had been in effect beginning on the first day of the Fiscal Year. Said differences shall be applied to the particular rentals, fees, or charges for which a difference(s) in rates resulted in an overpayment or underpayment, and shall be remitted by AIRLINE or credited or refunded by AUTHORITY in the month immediately following the calculation of the new Fiscal Year rates and the giving of written notice to AIRLINE by AUTHORITY.

8.02 Other Rate Changes. Rates for rentals, fees, and charges may be changed at any other time that unaudited monthly AUTHORITY financial data indicates that total rentals, fees, and charges payable pursuant to the then current rate schedules are reasonably estimated and anticipated by AUTHORITY to increase or decrease by more than ten percent (10%) from the total rentals, fees, and charges that would be payable based upon the use of the monthly financial data then available for said Fiscal Year. Rates for rentals, fees, and charges may also be changed whenever required by the terms and provisions of the Bond Resolution; provided, however, that Signatory Airlines' total rentals, fees, and charges payable to AUTHORITY shall be allocated to AIRLINE in accordance with this Agreement.

8.03 Incorporation of Exhibit F. Adjustments to rates for rentals, fees, and charges shall be determined in accordance with Exhibit F and transmitted to AIRLINE without the necessity of formal amendment of this Agreement.

8.04 Settlement. AUTHORITY shall use its best efforts such that within one hundred twenty (120) days following the close of each Fiscal Year, or as soon as unaudited financial data for said Fiscal Year is available, rates for rentals, fees, and charges for the preceding Fiscal Year shall be recalculated using unaudited financial data and the methods set forth in Exhibit F. AIRLINE shall have reasonable access to the records of AUTHORITY, and shall have the right to audit the financial data used in connection with such recalculation. Upon the determination of any difference(s) between the actual rentals, fees, and charges paid by Signatory Airlines during the preceding Fiscal Year and the rentals, fees, and charges that would have been paid by Signatory Airlines using said recalculated rates, AUTHORITY shall, in the event of overpayment, promptly refund to AIRLINE the amount of such overpayment within 30 days, and in the event of underpayment, invoice AIRLINE for the amount of such underpayment. Said invoiced amount shall be due within thirty (30) days of the invoice mailing date.

8.05 Use of Airport Fund. AUTHORITY may use the amounts remaining in the Airport Fund at the end of each Fiscal Year after determination of Revenue Sharing as described in Section 8.06, if available, for the following purposes and in the order of priority as determined by AUTHORITY: (i) for AUTHORITY to satisfy its obligations under the determination of any Settlement pursuant to Section 8.04; (ii) for improvements on, additions to, and acquisitions for the Airport System; (iii) for Debt Service on Bonds; (iv) for the purchase and retirement of Bonds; and (v) for any lawful Airport System Purpose.

8.06 Revenue Sharing. At the end of each Fiscal Year, after determination of Settlement in Section

8.04, AUTHORITY will share with the passenger Signatory Airlines a portion of net remaining Revenues, if available, calculated in accordance with Exhibit F. Availability of revenue sharing will be based on AUTHORITY's ability to satisfy its obligations and meet all Bond Resolution requirements in each Fiscal Year.

8.07 AUTHORITY Covenants.

A. AUTHORITY covenants that for purposes of assigning and allocating costs, it shall utilize generally accepted accounting practices utilized for airports operating as an enterprise fund, and include only those charges properly attributable to the Airport System.

B. AUTHORITY shall operate the Airport System in a manner so as to produce Revenues from concessionaires, tenants, and other users of the Airport System of a nature and amount which would be produced by a reasonably prudent operator of an airport system of substantially similar size, use, and activity, with due regard for the interests of the public, subject to existing leases.

C. AUTHORITY shall use Revenues of the Airport System in accordance with the provisions of the Bond Resolution and applicable law.

D. AUTHORITY, to the extent authorized by the laws governing AUTHORITY along with all applicable tax laws, will use its best efforts to use tax-exempt sources for financing the Airport System.

E. All rates and charges shall be at reasonable and non-discriminatory rates based on AUTHORITY's cost of the facility or service provided to and used by AIRLINE.

F. Indirect and general administrative costs shall be allocated in a reasonable, transparent cost allocation formula calculated consistently for all Cost Centers of the AUTHORITY.

ARTICLE 9: ALTERATIONS AND IMPROVEMENTS BY AIRLINE

9.01 Alterations and Improvements by AIRLINE

A. In accordance with Paragraph 5.01M AIRLINE may construct and install, at AIRLINE's sole expense, such improvements in its Exclusive Use Premises as AIRLINE deems to be necessary for its operations; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by the Executive Director in writing prior to the commencement of any and all such construction or installation and that AIRLINE complies with the requirements of AUTHORITY's Leasehold Development Standards. Said approval shall not be unreasonably withheld, conditioned or delayed. Provided further, that no reduction or abatement of rentals, fees, and charges shall be allowed for any interference with AIRLINE's operations by such construction.

B. Prior to the commencement of any improvements greater than \$200,000, AUTHORITY shall require that AIRLINE obtain, or cause to be obtained, payment and performance bonds or other security that meets the requirements of Section 255.05, Florida Statutes in a sum equal to the full amount of the construction contract awarded by AIRLINE for the improvements. Said bond shall name AUTHORITY as an obligee hereunder and shall be drawn in a form and from such company acceptable to AUTHORITY and licensed to do business in the State of Florida; shall guarantee the faithful performance of necessary construction and completion of improvements and payment of all persons who furnish labor, services, or materials for the prosecution of the work; in accordance with approved final plans and detailed specifications; and shall protect AUTHORITY against any losses and liability, damages, expenses, claims, and judgments caused by or resulting from any failure to perform completely the work described. The payment bond shall be provided in the sum equal to the full amount of the construction contract awarded by AIRLINE for the improvements. Said bond shall name AUTHORITY as an obligee thereunder and shall guarantee payment of all wages for labor and services engaged, and of all bills for materials, supplies, and equipment used in the performance of said construction contract. Any work associated with such construction or installation shall not unreasonably interfere with the operation of the Airport, or otherwise unreasonably interfere with the permitted activities of other Terminal tenants and users. Upon completion of approved construction and within sixty (60) days of AIRLINE's receipt of a certificate of occupancy, a complete set of as-built drawings shall be delivered to the Executive Director in a media type and format acceptable for the permanent record of AUTHORITY.

C. AIRLINE shall furnish or require contractors to furnish satisfactory evidence of statutory

worker's compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance, on a builder's risk form with the interest of AUTHORITY endorsed thereon, in such amounts and in such manner as AUTHORITY may reasonably require. AUTHORITY may require additional insurance for any alterations or improvements approved hereunder, in such limits as AUTHORITY reasonably determines to be necessary.

D. Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with the Leasehold Development Standards and all applicable state and local codes and laws and subject to inspection by the Executive Director.

E. All improvements made to Airline Premises and additions and alterations thereto made by AIRLINE, except those financed by AUTHORITY, shall be and remain the property of AIRLINE until expiration of the Term of this Agreement. Upon termination or cancellation of this Agreement, said additions and alterations shall become the property of AUTHORITY or at AUTHORITY's option removed by AIRLINE; provided, however, that any trade fixtures, signs, equipment and other movable personal property of AIRLINE not permanently affixed to Airline Premises shall remain the property of AIRLINE, subject to the terms of Article 14.

ARTICLE 10: DAMAGE OR DESTRUCTION

10.01 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 untenable as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as hereinafter provided. No abatement of rentals shall accrue to AIRLINE so long as Airline Premises remain tenantable.

10.02 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 untenable but capable of being repaired, as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as hereinafter provided. If such repairs have not been commenced by AUTHORITY within 90 days of such damage, AIRLINE shall have the option to terminate its agreement related to those facilities so damaged. In such case, the rentals 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 untenable bears to total Airline Premises until such time as such affected Airline Premises shall be restored adequately for AIRLINE's use. AUTHORITY shall use its best efforts to provide AIRLINE with alternate facilities acceptable to AIRLINE to continue its operation while repairs are being completed, at a rental rate not to exceed that provided for in this Agreement for comparable space.

10.03 Destruction.

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 not economically feasible to repair, as reasonably determined by AUTHORITY, AUTHORITY shall notify AIRLINE within a period of forty-five (45) days after the date of such damage of its decision whether to reconstruct or replace said space; provided, however, AUTHORITY shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected Airline Premises shall be paid up to the time of such damage and thereafter shall abate until such time as replacement or reconstructed space becomes available for use by AIRLINE.

B. In the event AUTHORITY elects to reconstruct or replace affected Airline Premises, AUTHORITY shall use its best efforts to provide AIRLINE with alternate facilities reasonably acceptable to AIRLINE to continue its operation while reconstruction or replacement is being completed at a rental rate not to exceed that provided for in this Agreement for comparable space.

C. In the event AUTHORITY elects to not reconstruct or replace affected Airline Premises, the agreement for the affected premises shall be terminated and AUTHORITY shall meet and consult with AIRLINE on ways and means to permanently provide AIRLINE with adequate replacement space for affected Airline Premises. In such event, AUTHORITY agrees to amend this Agreement to reflect related additions and deletions to Airline Premises.

10.04 Damage Caused By AIRLINE. Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act or omission of AIRLINE, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Airline Premises. To the extent that the costs of repairs shall exceed the amount of any insurance proceeds payable to AUTHORITY by reason of such damage or destruction, AIRLINE shall pay the amount of such additional costs to AUTHORITY.

10.05 AUTHORITY's Responsibilities. AUTHORITY shall maintain adequate, reasonable and customary levels of insurance with no less restrictive coverage than that provided by standard extended coverage endorsements on the "all risk" form, for the full replacement costs thereof as determined from time to time by the AUTHORITY; provided, however, that AUTHORITY's obligations to repair, reconstruct, or replace affected premises under the provisions of this Article 10 shall in any event be limited to restoring affected Airline Premises to substantially the same condition that existed at the date of damage or destruction, including any subsequent improvements made by AUTHORITY, and shall further be limited to the extent of insurance proceeds and other funds available to AUTHORITY for such repair, reconstruction, or replacement; provided further that AUTHORITY shall in no way be responsible for the restoration or replacement of any equipment, furnishings, property, real improvements, signs, or other items installed and/or owned by AIRLINE in accordance with this Agreement, unless such damage is caused by negligence or willful act or omission of AUTHORITY, its officials, agents, or employees acting within the course or scope of their employment.

ARTICLE 11: INDEMNIFICATION AND INSURANCE

11.01 Indemnification. Except where, and to the extent, it is caused by the negligence of the agents, employees, contractors, officers or board of the AUTHORITY, AIRLINE agrees to protect, defend, reimburse, indemnify and hold AUTHORITY and Lee County, Florida and their respective agents, employees, board members and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney's fees) and causes of action of every kind and character, whether or not meritorious, against or from AUTHORITY by reason of any damage to property (or the environment, including any contamination of Airport property such as the soil or storm water by fuel, gas, chemicals or other substances deemed by the Environmental Protection Agency (EPA) to be environmental contaminants at the time this Agreement is executed or as may be redefined by the appropriate regulatory agencies in the future), or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with AIRLINE's performance under this Agreement, AIRLINE's use or occupancy of the Airline Premises, AIRLINE's negligent acts, omissions or operations hereunder or the performance, non-performance or purported performance of AIRLINE or any breach of the terms of this Agreement by AIRLINE. Provided, however, that upon the filing by anyone of a claim with the AUTHORITY for damages arising out of incidents for which AIRLINE herein agrees to indemnify and hold the AUTHORITY harmless, the AUTHORITY shall promptly notify AIRLINE of such claim and, in the event that AIRLINE does not settle or compromise such claim, then AIRLINE shall undertake the legal defense of such claim both on behalf of AIRLINE and on behalf of the AUTHORITY. It is specifically agreed, however, that the AUTHORITY, at its option and at its own expense, may participate in the legal defense of such claim. Any final judgment rendered against the AUTHORITY for any cause for which AIRLINE is liable hereunder shall be conclusive against AIRLINE as to liability and amount upon the expiration of the time for appeal therefrom. AIRLINE recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges that it is given in acknowledgement of the good and valuable consideration provided by AUTHORITY in support of this indemnification in accordance with laws of the State of Florida. This clause shall survive the termination of this Agreement as to claims arising during the Term thereof. Compliance with the insurance requirements of this Article 11 shall not relieve AIRLINE of its liability or obligation to indemnify AUTHORITY as set forth in this Article 11.

11.02 Insurance.

A. During the Term of this Agreement, AIRLINE shall provide, pay for and maintain with companies, reasonably satisfactory to AUTHORITY, the types of insurance described herein. All

insurance shall be issued by responsible insurance companies eligible to do business in the State of Florida.

B. All liability policies shall provide that AUTHORITY is an Additional Insured to the extent of AIRLINE's contractual obligations hereunder. The insurance coverage and limits required shall be evidenced by properly executed certificates of insurance. These certificates shall be signed by the authorized representative of the insurance company shown on the certificate. In addition, certified, true, and exact copies of all insurance policies shall be made available to AUTHORITY, if requested, on a timely basis. All AUTHORITY travel expenses associated with traveling to AIRLINE's headquarters to review such policies shall be reimbursed by AIRLINE. The required policies of insurance shall be construed in accordance with the laws of the State of Florida.

C. If at any time AUTHORITY requests a written statement from the insurance company as to any impairments to the aggregate limit, AIRLINE shall promptly authorize and have delivered such statement to AUTHORITY. AIRLINE authorizes AUTHORITY to confirm with AIRLINE's insurance agents, brokers and insurance companies all information furnished AUTHORITY, as to its compliance with its insurance requirements. Renewal Certificates of Insurance must be provided to AUTHORITY as soon as practical but in every instance prior to expiration of current coverages.

D. All required insurance coverages of AIRLINE shall be primary to any insurance or self-insurance program of AUTHORITY.

E. The acceptance of delivery to AUTHORITY of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or acceptance by AUTHORITY that the insurance requirements in this Agreement have been met.

F. No operations shall either commence or continue at the Airport unless and until the required certificates of insurance are in effect and approved by AUTHORITY.

G. The insurance coverages and limits required of AIRLINE under this Agreement are designed to meet the minimum requirements of AUTHORITY. They are not designed as a recommended insurance program for AIRLINE. AIRLINE is responsible for insuring its real and personal property located at the Airport. AIRLINE, alone, shall be responsible for the sufficiency of its own insurance program. Should AIRLINE have any question concerning its exposures to loss under this Agreement, or the possible

insurance coverages needed therefor, it should seek professional advice.

H. AIRLINE and AUTHORITY understand and agree that the limits of the insurance herein required may from time to time become inadequate, and AIRLINE agrees that it will increase such limits upon receipt of written notice. AIRLINE shall furnish AUTHORITY, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force.

I. AIRLINE or AIRLINE's insurance companies or their authorized representative shall give AUTHORITY sixty (60) days prior written notice by registered or certificated mail of any cancellation, intent not to renew, or material reduction in any policy's coverage, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, it is agreed that immediate steps will be taken to have it reinstated. Said notices shall be sent pursuant to Section 18.22 of this Agreement.

J. Should at any time AIRLINE not, in the opinion of AUTHORITY, provide or maintain the insurance coverages required in this Agreement, AIRLINE must discontinue operations at the Airport, and AUTHORITY may terminate or suspend this Agreement, in accordance with Article 12.01 B(3).

K. The amounts and types of insurance shall conform to the following minimum requirements with policies, forms and endorsements that are comparable to Insurance Service Office (ISO) requirements. Notwithstanding the foregoing, at a minimum, the wording of all policies, forms and endorsements must be reasonably acceptable to AUTHORITY.

(1) Workers Compensation and Employer's Liability Insurance shall be maintained in force by AIRLINE during the Term of this Agreement for all employees engaged in the operations under this Agreement. The limits of coverage shall not be less than:

| | |
|-----------------------|---|
| Workers' Compensation | Florida Statutory |
| Employer's Liability | \$1,000,000 Limit Each Accident |
| | \$1,000,000 Limit Disease Aggregate |
| | \$1,000,000 Limit Disease Each Employee |

(2) Airport Liability Insurance shall be maintained by AIRLINE for the life of this

Agreement. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and completed Operations Coverage and shall not exclude the (XCU) Explosion, Collapse and Underground Property Damage Liability Coverage. Coverage shall be applicable to the operation of all mobile and ground equipment at the Airport. The limits of coverage shall not be less than:

Airlines Operating Aircraft with fifty (50) or more seats:

Bodily & Personal Injury \$100,000,000 Combined Single Limit
& Property Damage Liability Each Occurrence & Aggregate

Airlines Operating Aircraft with less than fifty (50) seats:

Bodily & Personal Injury \$50,000,000 Combined Single Limit
& Property Damage Liability Each Occurrence & Aggregate

(3) Aircraft Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement for all owned, non-owned, leased or hired aircraft, including passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury \$100,000,000 Combined Single Limit
& Property Damage Liability Each Occurrence & Aggregate

(4) Business Automobile Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury \$5,000,000 Combined Single Limit
& Property Damage Liability Each Occurrence & Aggregate

(5) Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability required for the Airport Liability Policy, Aircraft Liability and the Business Automobile Policy. The limits of coverage shall not be less than:

Umbrella or Excess Liability Policy \$100,000,000 Combined Single Limit

Each Occurrence & Aggregate-Specific
for this Agreement

\$200,000,000 Combined Single Limit
Each Occurrence & Aggregate-Not Specific
for this Agreement

Primary Liability Limits for the underlying Airport General Liability Coverage:

Bodily & Personal Injury
& Property Damage Liability

\$10,000,000 Combined Single Limit
Each Occurrence & Aggregate

ARTICLE 12: CANCELLATION BY AUTHORITY

12.01 Events of Default. The events described below shall be deemed events of default by AIRLINE hereunder:

A. Upon the occurrence of the following event of default, AUTHORITY shall immediately give written notice of default.

The conduct of any business or performance of any acts at the Airport not specifically authorized herein or by other agreements between AUTHORITY and AIRLINE, and said business or acts do not cease within thirty (30) days of receipt of AUTHORITY's written notice to cease said business or acts.

B. Upon the occurrence of any one of the following events of default, AUTHORITY shall immediately give written notice of default. Upon receiving notice of any default listed in this Paragraph 12.01B, AIRLINE shall cure the default within thirty (30) days of receiving the notice.

(1) The failure by AIRLINE to pay any part of the rentals, fees, and charges due hereunder and the continued failure to pay said amounts in full within thirty (30) days of AUTHORITY's written notice of payments past due. Provided, however, if a dispute arises between AUTHORITY and AIRLINE with respect to any obligation or alleged obligation of AIRLINE to make payments to AUTHORITY, payments under protest by AIRLINE of the amount due shall not waive any of AIRLINE'S rights to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then AUTHORITY shall promptly reimburse AIRLINE any amount determined as not due plus interest on such amount at one and one-half percent (1-1/2%) per month.

(2) The failure by AIRLINE to provide and keep in force Contract Security in accordance with Section 7.08.

(3) The failure by AIRLINE to maintain and keep in force insurance coverage in accordance with this Agreement. Notwithstanding any other provisions of this Paragraph 12.01B, AIRLINE must immediately discontinue operations at the Airport in accordance with

Paragraphs 11.02F and 11.02J until such time as insurance coverage is in force.

C. Upon the occurrence of any one of the following events of default, AUTHORITY may give written notice of default. Upon receiving notice of any default listed in this Paragraph 12.01C, AIRLINE shall: (1) cure the default within thirty (30) days of receiving the notice; or (2) if by reason of the nature of such default, the same cannot be remedied within thirty (30) days, AIRLINE shall commence the remedying of such default within said thirty (30) days following such written notice, and having so commenced, continue with diligence the curing thereof until the default is remedied. AIRLINE shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, and (ii) that it is proceeding with diligence to cure said default, and that such default will be cured within a reasonable period of time.

- (1) The failure by AIRLINE to remit PFCs in accordance with Section 18.03.
- (2) The appointment of a trustee, custodian, or receiver of all or a substantial portion of AIRLINE's assets.
- (3) The divestiture of AIRLINE's estate herein by operation of law, by dissolution, or by liquidation, (not including a merger or sale of assets).
- (4) The insolvency of AIRLINE; or if AIRLINE shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, or shall seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by AIRLINE of a voluntary petition of bankruptcy or the institution of proceedings against AIRLINE the adjudication of AIRLINE as a bankrupt pursuant thereto.
- (5) The abandonment by AIRLINE of the Airline Premises, or its conduct of business at the Airport; and, in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a labor dispute or other governmental action in which AIRLINE is directly involved.
- (6) Failure by AIRLINE to make under-utilized PFC-funded Airline Premises available for use by other Air Transportation Companies in accordance with Section 16.05 of this Agreement.

12.02 Continuing Responsibilities of AIRLINE. Notwithstanding the occurrence of any event of default, AIRLINE shall remain liable to AUTHORITY for all rentals, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless AUTHORITY elects to cancel this Agreement, AIRLINE shall remain liable for and promptly pay all rentals, fees, and charges accruing hereunder until termination of this Agreement as set forth in Article 3 or until this Agreement is canceled by AIRLINE pursuant to Article 13.

12.03 AUTHORITY's Remedies. Upon the occurrence of any event enumerated in Paragraphs 12.01A or 12.01B, including applicable notice and cure periods, the following remedies shall be available to AUTHORITY:

- A. AUTHORITY may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified.
- B. AUTHORITY may cancel this Agreement, effective upon the date specified in the notice of cancellation. Upon such date, AIRLINE shall be deemed to have no further rights hereunder and AUTHORITY shall have the right to take immediate possession of AIRLINE's Airline Premises.
- C. AUTHORITY may reenter the Airline Premises and may remove all AIRLINE personal property from same upon the date of reentry specified in AUTHORITY's written notice of reentry to AIRLINE. For the event enumerated in Paragraph 12.01A, reentry shall be not less than fifteen (15) days from the date of notice of reentry. Upon any removal of AIRLINE property by AUTHORITY hereunder, AIRLINE property may be stored at a public warehouse or elsewhere at AIRLINE's sole cost and expense.
- D. AUTHORITY may relet Airline Premises and any improvements thereon or any part thereof at such rentals, fees, and charges and upon such other terms and conditions as AUTHORITY, in its sole discretion, may deem advisable, with the right to make alterations, repairs or improvements on said Airline Premises. In reletting the Airline Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms comparable than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's event of default.
- E. In the event that AUTHORITY relets Airline Premises, rentals, fees, and charges received by

AUTHORITY from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges as would have been payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any reasonable costs and expenses incurred by AUTHORITY in such reletting not covered by the rentals, fees, and charges received from such reletting.

F. No reentry or reletting of Airline Premises by AUTHORITY shall be construed as an election on AUTHORITY'S part to cancel this Agreement unless a written notice of cancellation is given to AIRLINE.

G. AIRLINE shall pay to AUTHORITY all other costs, incurred by AUTHORITY in the exercise of any remedy in this Article 12, including, but not limited to, reasonable attorney fees, disbursements, court costs, and expert fees.

12.04 Remedies Under Federal Bankruptcy Laws. Notwithstanding the foregoing, upon the filing by or against AIRLINE of any proceeding under Federal bankruptcy laws, if AIRLINE has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, AUTHORITY shall have the right to cancel this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, as such may be subsequently amended, supplemented, or replaced. Such cancellation shall be by written notice to AIRLINE within sixty (60) days from the date of AIRLINE's initial filing in bankruptcy court.

ARTICLE 13: CANCELLATION BY AIRLINE

13.01 Events of Default. The events described below shall be deemed events of default by AUTHORITY hereunder:

A. AUTHORITY fails to keep, perform, or observe any material term, covenant, or condition herein contained, to be kept, performed, or observed by AUTHORITY and such failure continues for sixty (60) days after receipt of written notice from AIRLINE; or, if by its nature such default cannot be cured within such sixty (60) day period, AUTHORITY shall not commence to cure or remove such default within said sixty (60) days and to cure or remove the same as promptly as reasonably practicable; provided, however, AUTHORITY's performance under this Paragraph shall be subject to the provisions of Section 18.25 of this Agreement.

B. Airport is closed to flights in general or to the flights of AIRLINE, for reasons other than those circumstances within AIRLINE's control, and Airport fails to be reopened to such flights within sixty (60) consecutive days from such closure.

C. The Airport is permanently closed as an air carrier airport by act of any federal, state, or local government agency having competent jurisdiction; or AIRLINE is unable to use Airport for a period of at least sixty (60) consecutive days due to any law or any order, rule or regulation of any governmental authority having jurisdiction over the operations of the Airport; or any court of competent jurisdiction issues an injunction preventing AUTHORITY or AIRLINE from using Airport for airport purposes, for reasons other than those circumstances within AIRLINE's control, and such injunction remains in force for a period of at least sixty (60) consecutive days.

D. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control, or use of the Airport in such a manner as to substantially restrict AIRLINE from conducting its operations, if such restriction be continued for a period of sixty (60) consecutive days or more.

13.02 AIRLINE's Remedy. So long as AIRLINE is not in default as set forth in Section 12.01 of this Agreement, including but not limited to payments due to AUTHORITY hereunder, AIRLINE may cancel this Agreement upon the occurrence of an event of default, as set forth in Section 13.01 and AUTHORITY's failure to cure or remove the same within the time periods set forth in that section. In such event, AIRLINE shall serve

fifteen (15) day advance written notice of cancellation to AUTHORITY. All rentals, fees, and charges payable by AIRLINE shall cease as of the date of such cancellation and AIRLINE shall surrender the Airline Premises in accordance with Article 14 hereof.

ARTICLE 14: SURRENDER OF AIRLINE PREMISES

14.01 Surrender and Delivery. Upon termination or cancellation of this Agreement, AIRLINE shall promptly and peaceably surrender to AUTHORITY its Airline Premises and all improvements thereon to which AUTHORITY is entitled in good and fit condition, reasonable wear and tear as well as damage or repair which is the responsibility of AUTHORITY hereunder excepted; provided, however, nothing in this Section 14.01 shall be construed to modify the obligations of the parties set forth in Article 9, Article 10, and Article 11.

14.02 Removal of Property.

A. Unless AIRLINE is in default for payment of rentals, fees, and charges hereunder, AIRLINE shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft (which AIRLINE may remove regardless of any default status), tools, equipment, trade fixtures, and other personal property, title to which shall 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) business days following termination of this Agreement, whether by expiration of time or otherwise, as provided herein. AIRLINE shall not abandon any portion of its property at the Airport without the written consent of AUTHORITY.

B. Any and all property not removed by AIRLINE within thirty (30) business days following the date of termination of this Agreement and left on the Airport without the consent of the AUTHORITY shall, at the option of AUTHORITY, (i) become the property of AUTHORITY at no cost to AUTHORITY; (ii) be stored by AUTHORITY, at no cost to AUTHORITY and released to AIRLINE upon payment of any outstanding unpaid rentals, fees, or charges owed by AIRLINE; or (iii) sixty (60) days after the termination date be sold at public or private sale at no cost to AUTHORITY with the proceeds of any sale to be retained by AUTHORITY. Except as may be agreed to otherwise by AUTHORITY and AIRLINE, all AUTHORITY property damaged by or as a result of the removal of AIRLINE's property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.

14.03 Holding Over. In the event AIRLINE uses its Airline Premises without the written consent of AUTHORITY after this Agreement has been canceled or expires, AIRLINE shall be deemed a tenant at sufferance during the period of such use and shall pay the rate for rentals, fees, and charges established by AUTHORITY for Air Transportation Companies which are not Signatory Airlines during such period. In such event, AUTHORITY shall have the right to all remedies provided under applicable laws; provided, however,

AUTHORITY's consent shall not be unreasonably withheld during any period of good faith lease negotiations between AIRLINE and AUTHORITY.

ARTICLE 15: ASSIGNMENT, SUBLETTING, AND HANDLING AGREEMENTS

15.01 Assignment and Subletting by AIRLINE.

A. In the event that AIRLINE shall, directly or indirectly, assign, sell, hypothecate, or otherwise transfer this Agreement, or any portion of Airline Premises, without the prior written consent of AUTHORITY, AUTHORITY, in its sole discretion may terminate this Agreement upon thirty (30) days written notice; provided, however, AIRLINE may assign; (i) this Agreement to any person, firm or corporation with which AIRLINE may merge or consolidate or which may succeed to the business of AIRLINE; or (ii) all or a part of its rights, privileges and obligations hereunder to another air carrier but only subject to the mutual approval of AIRLINE and AUTHORITY after cooperative efforts to find such an assignee and provided that such assignment shall not result in compensation to AIRLINE for the rights, privileges and obligations hereunder so assigned.

B. AIRLINE shall not sublease Airline Premises, other than to an Affiliate, without the prior written consent of AUTHORITY, which consent may be withheld if AUTHORITY has substantially similar space available, but unleased, or if AUTHORITY can make such space available for lease within a reasonable time, and, failing in this, such prior consent shall not be unreasonably withheld. Use of AIRLINE's Exclusive Use Premises or any part thereof, by anyone other than AIRLINE shall be deemed a sublease.

C. AIRLINE shall include with its request for permission to assign or sublease, a copy of the proposed assignment or sublease agreement. The assignment or sublease agreement submitted with AIRLINE's request shall include the following information: (i) the term; (ii) the area or space to be assigned or subleased; (iii) the sublease rentals to be charged; and (iv) the provision that assignee or sublessee must execute a separate agreement with AUTHORITY for operating at the Airport. Any other information reasonably requested by AUTHORITY pertaining to said sublease or assignment shall be promptly provided by AIRLINE. A fully executed copy of such sublease or assignment shall be submitted to AUTHORITY for final approval within sixty (60) days of the occupancy of Airline Premises, or any portion thereof, by the assignee or sublessee.

D. Nothing in this Article 15 shall be construed to release AIRLINE from its obligations under this Agreement, including but not limited to, the payment of rentals, fees, and charges provided herein.

15.02 Handling Agreements. In the event AIRLINE agrees to ground handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the foregoing, AIRLINE shall not ground handle any Air Transportation Company which does not have consent of AUTHORITY for the operation of its Air Transportation Business at the Airport, and a handling agreement between AIRLINE and the Air Transportation Company.

ARTICLE 16: AVAILABILITY OF ADEQUATE FACILITIES

16.01 Declaration of Intent.

A. The parties acknowledge the objective of AUTHORITY to offer to all Air Transportation Companies desiring to serve Airport 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 Terminal Aircraft Apron areas to meet the stated requests of AIRLINE and/or such other Air Transportation Companies ("Requesting Airlines") for additional facilities, AUTHORITY hereby states its intent to pursue the objective of achieving an optimum balance in the overall utilization of the Terminal and Terminal Aircraft Apron areas to be achieved, if necessary, through sharing, from time to time, of gate positions and other passenger handling facilities.

B. It is the policy of AUTHORITY, to the extent practicable, to solve space problems in the following manner: first, through AUTHORITY's leasing of unleased premises in the Terminal; second, through the use of AUTHORITY-approved subleases; third, through accommodation on Preferential Use Premises; fourth, through the expansion of the Terminal, unless in the opinion of AUTHORITY, physical, financial, or time limitations make expansion impractical; fifth, through the reassignment of Preferential Use Premises; and sixth, through accommodation of Exclusive Use Premises.

16.02 Accommodation on Preferential Use Premises.

A. AIRLINE shall cooperate with AUTHORITY to accommodate the needs of a Requesting Airline by permitting such Requesting Airline to utilize AIRLINE's Preferential Use Premises for the time period(s) necessary to permit passenger loading and unloading operations in conjunction with the scheduled operations of such Requesting Airline at times when the use of such facilities shall not interfere with AIRLINE's planned operations or those of its approved Affiliates, sublessees, licensees, or permittees. AUTHORITY will use its best efforts to leave AIRLINE on AIRLINE's preferentially-leased Airline Premises when accommodating the needs of a Requesting Airline.

B. AUTHORITY will require Requesting Airlines to first coordinate directly with Signatory Airlines in writing for the joint use of such Preferential Use Premises, if AUTHORITY has no available gates or other areas in the Terminal to accommodate the needs of said Requesting Airline.

C. AIRLINE's accommodation of a Requesting Airline shall be subject to a written agreement between AIRLINE and Requesting Airline, approved in writing by AUTHORITY prior to the effective date thereof and Requesting Airline entering into an agreement with AUTHORITY to operate at the Airport. The proffering of a handling agreement by AIRLINE shall be deemed a reasonable effort for the purpose of this Paragraph 16.02C.

D. In determining if AIRLINE shall be required to accommodate a Requesting Airline, AUTHORITY shall consider AIRLINE's capabilities, capacity, facilities, and personnel therefor, after taking into account AIRLINE's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of AIRLINE, and the need for labor harmony. AUTHORITY shall not require AIRLINE to accommodate a Requesting Airline if AUTHORITY has unassigned gates which can reasonably accommodate the needs of said Requesting Airline.

E. Provided, however, AIRLINE shall not be required to accommodate such other Air Transportation Companies pursuant to Paragraph 16.02D if all of AIRLINE's gate positions are occupied by AIRLINE's flights or flights of other Air Transportation Companies already being accommodated by AIRLINE for schedule, weather, or mechanical reasons at the time of said flight needing to be accommodated. For purposes of this provision, the overnight parking of AIRLINE's aircraft at a gate position or parking of AIRLINE's aircraft at a gate position other than between one (1) hour before arrival or one (1) hour after scheduled departure of AIRLINE's aircraft shall not be deemed occupation of said gate position. However, AUTHORITY shall use its best efforts to accommodate the Air Transportation Company on a gate not occupied by overnight parking of AIRLINE'S aircraft. If AIRLINE accommodates such other Air Transportation Companies then said other Air Transportation Companies shall be required to vacate AIRLINE's gate position at least sixty (60) minutes prior to AIRLINE's next scheduled flight arrival at said gate position.

F. Subject to the provisions of Sections 15.01 and 15.02, nothing contained in this Article shall prevent or prohibit AIRLINE from electing to enter into an agreement with other Scheduled Air Carriers authorized to operate into and out of the Airport and desiring the joint use of its Preferential Use Premises as provided in Article 15 herein.

G. AIRLINE shall cooperate with AUTHORITY to accommodate other Air Transportation Companies from time to time, as deemed necessary by AUTHORITY for situations including, but not limited to unscheduled flights, including charters, diversions due to weather, and other circumstances not

otherwise accommodated or handled by a Signatory Airline.

H. During the period of use of AIRLINE's facilities by an Air Transportation Company pursuant to this Article 16, AIRLINE shall be relieved of its obligation under this Agreement to indemnify and save harmless AUTHORITY, its officers, directors, employees, or agents with regard to any claim for property damage or personal injury arising out of or in connection with said accommodated Air Transportation Company's use of its Preferential Use Premises, unless such damage or injury is caused by AIRLINE, its officers, directors, employees or agents who have come upon its Preferential Use Premises in connection with AIRLINE's occupancy hereunder. AIRLINE shall require such accommodated Air Transportation Companies to agree in writing to indemnify AUTHORITY and AIRLINE in the manner and to the extent required of AIRLINE, pursuant to Article 11 hereof.

16.03 Reassignment of Preferential Use Premises.

A. AUTHORITY shall provide at least one preferentially assigned gate to each Signatory Airline operating at least three flights per weekday. AUTHORITY reserves the right to reassign one or more of an AIRLINE's preferentially assigned gates to another Signatory Airline(s) if: (1) AIRLINE's scheduled average for any individual gate utilization falls below three (3) flights per gate per weekday (including flights of other Air Transportation Companies accommodated by AIRLINE); (2) AUTHORITY determines that there is a reasonable need for the preferential use of such gate(s) by another Signatory Airline(s); and (3) the new entrant Signatory Airline meets the required three (3) flights per gate per weekday minimum. Prior to such reassignment becoming effective, AIRLINE shall have a 90-day period to adjust its schedule to three or more flights per gate per week day so as not to be subject to such reassignment. When determining specific Preferential Use Premises to be reassigned, AUTHORITY shall not specify facilities that will disrupt the continuity and staffing of AIRLINE's operation.

B. In order to optimize passenger flow, use of the facility, and minimize future capital construction, AUTHORITY reserves the right to reassign aircraft parking positions and associated Preferential Use Premises and Exclusive Use Premises directly associated with AIRLINE's Preferential Use Premises in the Terminal. Should any reassignment occur AIRLINE will be assigned new space comparable in size quality and finish. Prior to any relocation AUTHORITY and AIRLINE will meet and agree on the amount of reimbursement due AIRLINE for the cost of providing tenant improvements, based on construction cost estimates, competitive bids, contract prices, or other information acceptable to the parties, that are comparable to the level of tenant improvements in AIRLINE's current Airline Premises

for similar facilities and relocation costs. The costs associated with any extraordinary tenant improvements not addressed earlier in this paragraph will not be reimbursed by AUTHORITY.

16.04 Accommodation on Exclusive Ticket Counter and Baggage Makeup.

A. AIRLINE shall cooperate with AUTHORITY to accommodate the needs of a Requesting Airline by permitting such Requesting Airline to utilize AIRLINE's exclusive ticket counter and baggage makeup for the time period(s) necessary to permit the Requesting Airline to operate its Air Transportation Business in conjunction with the scheduled operations of such Requesting Airline at times when the use of such facilities shall not interfere with AIRLINE's planned operations or those of its approved sublessees, licensees, or permittees.

B. AUTHORITY will require Requesting Airlines to first coordinate directly with Signatory Airlines in writing for the use of such exclusive ticket counter and baggage makeup, if AUTHORITY has no available space in the Terminal to accommodate the needs of said Requesting Airline.

C. AIRLINE's accommodation of a Requesting Airline shall be subject to a written agreement between AIRLINE and Requesting Airline, approved in writing by AUTHORITY prior to the effective date thereof and Requesting Airline entering into an agreement with AUTHORITY to operate at the Airport.

D. In determining if AIRLINE shall be required to accommodate a Requesting Airline, AUTHORITY shall consider AIRLINE's capabilities, capacity, facilities, and personnel therefor, after taking into account AIRLINE's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of AIRLINE, and the need for labor harmony. AUTHORITY shall not require AIRLINE to accommodate a Requesting Airline if AUTHORITY has unleased premises which can reasonably accommodate the needs of said Requesting Airline.

E. During the period of use of AIRLINE's facilities by an Air Transportation Company pursuant to this Article 16, AIRLINE shall be relieved of its obligation under this Agreement to indemnify and save harmless AUTHORITY, its officers, directors, employees, or agents with regard to any claim for property damage or personal injury arising out of or in connection with said accommodated Air Transportation Company's use of its exclusive ticket counter and baggage makeup, unless such damage or injury is caused by AIRLINE, its officers, directors, employees or agents who have come upon its

exclusive ticket counter and baggage makeup in connection with AIRLINE's occupancy hereunder. AIRLINE shall require such accommodated Air Transportation Companies to agree in writing to indemnify AUTHORITY and AIRLINE in the manner and to the extent required of AIRLINE, pursuant to Article 11 hereof.

16.05 Competitive Access to PFC-Funded Facilities. Should AIRLINE not fully utilize any portion of its exclusively leased, PFC-funded Airline Premises, AIRLINE agrees to make such Airline Premises available for use by any Air Transportation Company. In accordance with 14 CFR Part 158, failure to make such Exclusive Use Premises available shall be grounds for termination of this Agreement pursuant to Section 12.01B.

16.06 Regional/Commuter Operations.

A. To the extent practical, aircraft that are capable of connecting to a loading bridge must use a Terminal Aircraft Apron equipped with a loading bridge for the enplaning and deplaning of passengers.

B. Aircraft that are not capable of connecting to a loading bridge will use those areas of the Terminal Aircraft Aprons designated by AUTHORITY and will be accessed from the ramp level through commuter facilities unless otherwise approved by AUTHORITY.

ARTICLE 17: GOVERNMENT INCLUSION

17.01 Government Agreements. This Agreement shall be subordinate to the provisions of any existing or future agreements between AUTHORITY and the United States Government or other governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the 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. AUTHORITY agrees to provide AIRLINE written advance notice of any provisions which would adversely modify the material terms of this Agreement.

17.02 Federal Government's Emergency Clause. All provisions of this Agreement shall be subordinate to the rights of the United States of America to operate the Airport or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operations of the Airport by the United States of America.

17.03 Nondiscrimination

A. AIRLINE for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree as a covenant running with the land that (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airline Premises, (ii) in the construction of any improvements on, over, or under Airline Premises 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, and (iii) AIRLINE shall use the Airline Premises in compliance with all other requirements imposed by or pursuant to 14 CFR 152 and Title VI of the Civil Rights Act of 1964 and 49 CFR, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Title and Regulations may be amended.

B. AIRLINE acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprises (DBE), as said regulations may be amended, and such other similar regulations may be enacted, may be applicable to the activities of AIRLINE under the terms of this Agreement, unless exempted by said regulations, and AIRLINE hereby agrees to comply with the regulatory agencies, in

reference thereto. These requirements may include, but not be limited to, compliance with DBE participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if so directed, the contracting of specified percentages of goods and services contracts to DBEs.

C. In the event of breach of any of the above nondiscrimination covenants which is not cured AUTHORITY shall have the right to cancel this Agreement after such action as the United States Government may direct to enforce this covenant has been followed and completed, including exercise or expiration of appeal rights.

17.04 Security. AIRLINE, its officers, employees, agents, and those under its control, shall comply with security measures required of AIRLINE or AUTHORITY by the FAA or contained in any Airport master security plan approved by the FAA to include an Airport Tenant Security Program as outlined in 49 CFR Part 1542 respective to AIRLINE's Exclusive Use Premises and Preferential Use Premises. If AIRLINE, its officers, employees, agents, or those under its control shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against AUTHORITY, then, in addition to the provisions of Section 11.01, AIRLINE shall be responsible and shall reimburse AUTHORITY in the full amount of any such monetary penalty or other damages.

17.05 Environmental.

A. General Conditions.

(1) Notwithstanding any other provisions in this AGREEMENT, and in addition to any and all other requirements of this AGREEMENT or any other covenants, representations or warranties of AIRLINE, AIRLINE hereby expressly covenants, warrants and represents to AUTHORITY, in connection with AIRLINE's operations at the airport the following :

(2) AIRLINE is knowledgeable of all applicable federal, state, and local environmental laws, ordinances, rules, regulations and orders, which apply to AIRLINE's operations at the airport and acknowledges that such environmental laws, ordinances, rules, regulations and orders change from time-to-time, and AIRLINE agrees to keep informed of any such future changes.

(3) AIRLINE agrees to comply with all applicable federal, state, and local environmental laws, ordinances, rules, regulations, and orders which apply to AIRLINE's operations. AIRLINE agrees to hold harmless and indemnify AUTHORITY and Lee County, Florida for any violation by AIRLINE of such applicable federal, state, and local environmental laws, ordinances, rules, regulations and orders and for any non-compliance by AIRLINE with any permits issued to AIRLINE pursuant to such environmental laws, which hold harmless and indemnity shall include, but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures or monitor environmental conditions and for any monetary penalties, costs, expenses, or damages, including natural resource damages, imposed against AIRLINE, its employees, invitees, suppliers, or service providers or AUTHORITY by reason of AIRLINE's violation or non-compliance.

(4) AIRLINE agrees to cooperate with any investigation, audit or inquiry by AUTHORITY or any governmental agency, regarding possible violation of any environmental law or regulation upon the Airport.

(5) AIRLINE agrees that all remedies of AUTHORITY as provided herein with regard to AIRLINE's violation of any federal, state or local environmental laws, ordinances, rules, regulations or orders shall be deemed cumulative in nature and shall survive termination of this Agreement.

(6) AIRLINE agrees that any notice of violation, notice of non-compliance, or other enforcement action shall be provided to AUTHORITY within twenty-four (24) hours of receipt by AIRLINE or AIRLINE's agent. Any violation or notice of violation or non-compliance with federal, state, or local environmental law or ordinance shall be deemed a default under this Agreement. Such default may be cured within ten (10) days of receipt of notice of default from AUTHORITY, or such longer period as may be required to effect a cure provided AIRLINE commences a cure within said ten (10) days and thereafter diligently prosecutes the cure to completion. Any such default which is not cured shall be grounds for termination of this Agreement.

(7) In entering this Agreement, AUTHORITY expressly relies on the covenants, representations, and warranties of AIRLINE as stated herein.

B. Stormwater.

(1) Notwithstanding any other provisions or terms of this Agreement, AIRLINE acknowledges that certain properties within the Airport, or on AUTHORITY owned land, are subject to stormwater rules and regulations. AIRLINE agrees to observe and abide by such stormwater rules and regulations as may be applicable to AUTHORITY's property and uses thereof.

(2) AIRLINE acknowledges that any stormwater discharge permit issued to the AUTHORITY may name AIRLINE as a co-permittee. AUTHORITY and AIRLINE both acknowledge that close cooperation is necessary to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. AIRLINE acknowledges further that it may be necessary to undertake such actions to minimize the exposure of stormwater to "significant materials" generated, stored, handled or otherwise used by AIRLINE, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable stormwater rules and regulations.

(3) AUTHORITY will provide AIRLINE with written notice of any stormwater discharge permit requirements applicable to AIRLINE and with which AIRLINE will be obligated to comply from time-to-time, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. AIRLINE agrees that within ten (10) days of receipt of such written notice, it shall notify AUTHORITY in writing if it disputes any of the stormwater permit requirements it is being directed to undertake. If AIRLINE does not provide such timely notice, AIRLINE will be deemed to assent to undertake such stormwater permit requirements. In that event, AIRLINE agrees to undertake, at its sole expense, unless otherwise agreed to in writing between AUTHORITY and AIRLINE, those stormwater permit requirements for which it has received written notice from AUTHORITY, and AIRLINE agrees that it will hold harmless and indemnify AUTHORITY for any violations or non-compliance with any such permit requirements.

C. Solid and Hazardous Waste.

(1) If AIRLINE is deemed to be a generator of hazardous waste, as defined by federal, state or local law, AIRLINE shall obtain, if required, a generator identification number from the EPA and the appropriate generator permit, if required, and shall comply with all federal, state and local laws, and any rules and regulations promulgated thereunder, including but not limited to, insuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable law.

(2) AIRLINE agrees to provide AUTHORITY, upon request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation, responses, storage and disposal plans and material safety data sheets, within ten (10) days of any such requests by AUTHORITY.

ARTICLE 18: GENERAL PROVISIONS

18.01 Subordination to Bond Resolution.

A. This Agreement and all rights granted to AIRLINE hereunder are expressly subordinated and subject to the lien, covenants (including the rate covenants), and provisions of the pledges, transfer, hypothecation, or assignment made by AUTHORITY in the Bond Resolution. AUTHORITY and AIRLINE agree that to the extent required by the Bond Resolution or law, the holders of the Bonds or their designated representatives shall have the right to exercise any and all rights of AUTHORITY hereunder.

B. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to the Bond Resolution that would materially alter the terms and provisions of this Agreement or materially impact the levels of rentals, fees, and charges paid by AIRLINE (herein referred to as Material Amendments).

C. For any Material Amendments or supplements desired solely by AUTHORITY for its own purposes, AUTHORITY and AIRLINE shall use their best efforts to agree on the implementation. However, in the event AUTHORITY and AIRLINE cannot agree on the implementation of any Material Amendments or supplements desired solely by AUTHORITY for its own purposes, AIRLINE, in addition to cancellation rights provided elsewhere in this Agreement, shall have the right to cancel this Agreement upon thirty (30) days advance written notice.

D. AIRLINE agrees to execute all instruments, certificates, or other documents reasonably requested by AUTHORITY to assist AUTHORITY and bond counsel in determining and assuring that Bonds are issued in compliance with applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission and AIRLINE shall provide whatever additional relevant information is reasonably requested by AUTHORITY initially or on an ongoing basis in connection with complying with any of those rules and regulations.

18.02 Nonwaiver. No waiver of default by either party of any of the terms, covenants, or conditions of this Agreement to be performed, kept, and observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions to be performed, kept, and observed by the other party and shall not be deemed a waiver of any right on the part of the other party to cancel this

Agreement as provided herein.

18.03 Passenger Facility Charge. AUTHORITY reserves the right to assess and collect PFC's subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the "PFC Act") and implementing regulations as may be supplemented or amended from time to time. AIRLINE shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by AIRLINE to remit PFCs within the time frame required by 14 CFR Part 158 shall be grounds for termination of this Agreement pursuant to Section 12.01B.

18.04 Rights Non-Exclusive. Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges, and licenses granted under this Agreement, are "non-exclusive" and AUTHORITY reserves the right to grant similar privileges to others.

18.05 Quiet Enjoyment.

A. AUTHORITY agrees that, so long as AIRLINE's payment of rentals, fees, and charges is timely and AIRLINE keeps all covenants and agreements contained herein, AIRLINE shall peaceably have and enjoy its Airline Premises and all rights, privileges, and licenses of the Airport, its appurtenances and facilities granted herein, subject to the terms and conditions herein contained.

B. Consistent with the nature of AIRLINE's business, AIRLINE agrees that occupancy of its Airline Premises will be lawful and that it will not knowingly use or permit the use of Airline Premises in any way that would violate the terms of this Agreement, create a nuisance, or disturb other tenants or the general public. AIRLINE shall be responsible for the activity of its officers, employees, agents, and others under its control with respect to this provision.

18.06 Performance. The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

18.07 Avigation Rights. AUTHORITY 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 Airline Premises, for navigation or flight in the said airspace for landing on, taking off from, or operating at the Airport.

18.08 Rules and Regulations and Operational Directives.

A. AIRLINE, its officers, employees, agents, and others under its control shall observe and obey all laws, regulations, and orders of the federal, state, county, municipal governments and AUTHORITY (acting in its governmental capacity) which may be applicable to AIRLINE'S operations at the Airport.

B. AUTHORITY, acting in its governmental capacity, may from time to time adopt, amend, or revise the Airport's rules and regulations and operating directives governing the conduct of operations at the Airport, for reasons of safety, health, preservation of the property, or for the maintenance of the good and orderly appearance of the Airport. AIRLINE, its officers, employees, agents, and others under its control shall faithfully comply with and observe such reasonable and non-discriminatory rules and regulations and operating directives, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental authority having appropriate jurisdiction. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to such rules and regulations and operating directives that would materially alter the terms of this Agreement adversely.

C. AIRLINE shall be strictly liable and responsible for obtaining, maintaining current, and fully complying with, any and all permits, licenses, and other governmental authorizations, however designated, as may be required at any time throughout the entire Term of this Agreement by any federal, state, or local governmental entity or any court of law having jurisdiction over AIRLINE or AIRLINE's operations and activities.

18.09 Inspection. AIRLINE shall allow AUTHORITY's authorized representatives access to Airline Premises for the purpose of examining and inspecting said premises; for purposes necessary, incidental to, or connected with the performance of its obligations under this Agreement; or, in the exercise of its governmental functions. Except in the case of an emergency, AUTHORITY shall conduct such inspections during reasonable business hours, after reasonable prior notice to AIRLINE, not to interfere with AIRLINE's normal operations, and in the presence of AIRLINE's representative.

18.10 No Individual Liability. No member, officer, agent, director, or employee of AUTHORITY 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.

18.11 Relationship of Parties. 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 landlord and tenant.

18.12 Capacity to Execute. 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.

18.13 Savings. 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. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against AUTHORITY by reason of the preparation of this Agreement by AUTHORITY.

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

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

18.16 Titles. Paragraph titles are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or extent of any provision of this Agreement.

18.17 Severability. In the event that any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not materially prejudice either AUTHORITY or AIRLINE in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

18.18 Amendments. Except as provided in Sections 4.01 and 8.03, no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

18.19 Most Favored Nation. AUTHORITY covenants and agrees not to enter into any basic airline use and lease agreement with any Air Transportation Company which (i) makes substantially similar use of the Airport, (ii) operates substantially similar aircraft, and (iii) utilizes substantially similar facilities to that of AIRLINE, which contains more favorable terms than this Agreement, or to grant to any such Air Transportation Company rights or privileges with respect to the Airport which are not afforded to AIRLINE hereunder unless substantially the same terms, rights, privileges, and facilities are concurrently made available to AIRLINE.

18.20 Other Agreements. Other than as set forth herein, 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 AUTHORITY and AIRLINE authorizing the use of the Airport, its facilities, and appurtenances.

18.21 Approvals.

A. Unless otherwise stated, whenever this Agreement calls for approval by AUTHORITY, such approval shall be evidenced by the written approval of the Executive Director.

B. Any approval required by either party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

18.22 Notice.

A. All notices, requests, consents, and approvals served or given under this Agreement shall be served or given in writing with proof of delivery. If intended for AUTHORITY, notices shall be delivered to:

Executive Director
Lee County Port Authority
Southwest Florida International Airport
1100 Terminal Access Road, Suite 8671
Ft. Myers, FL 33913

or to such other address as may be designated by AUTHORITY by written notice to AIRLINE.

B. Notices to AIRLINE shall be delivered to:

or to such other address as may be designated by AIRLINE by written notice to AUTHORITY.

18.23 Agent For Service. It is expressly understood and agreed that if AIRLINE is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said state, AIRLINE shall appoint an agent for the purpose of service of process in any court action between it and AUTHORITY arising out of or based upon this Agreement. AIRLINE shall immediately, within ten (10) days of execution of this Agreement, notify AUTHORITY, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of Florida for service upon a non-resident engaging in business in the State. It is further expressly agreed, covenanted, and stipulated that, if for any reason, such service of process is not possible, as an alternative method of service of process, AIRLINE may be personally served out of the State of Florida by the registered mailing of such service at the address set forth in Section 18.22.

18.24 Governing Law and Legal Forum. This Agreement is to be read and construed in accordance with the laws of the State of Florida. All litigation concerning this Agreement by either party shall be instituted in Lee County, Florida.

18.25 Force Majeure. Except as herein provided, neither AUTHORITY 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, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control.

18.26 Entire Agreement. 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 AUTHORITY and AUTHORITY'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 AUTHORITY for, and AUTHORITY shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year first above written.

[COMPANY NAME]

(AIRLINE)

Witnessed

By: _____

(sign)

Name: _____

(print)

Title:

Date:

By: _____

(sign)

(print)

LEE COUNTY PORT AUTHORITY

ATTEST:

CHARLIE GREEN, CLERK

By: _____

Chairman or Vice Chairman,
Board of Port Commissioners

Date: _____

By:

Deputy Clerk

Date: _____

APPROVED AS TO FORM:

By:

Port Authority Attorney

Date: _____