

**SARASOTA MANATEE AIRPORT AUTHORITY**  
**SCHEDULED AIRLINE OPERATING AGREEMENT**  
**AND TERMINAL BUILDING LEASE**

**As Amended**



**SCHEDULED AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING LEASE**  
Sarasota Bradenton International Airport

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**SCHEDULED AIRLINE OPERATING AGREEMENT  
AND TERMINAL BUILDING LEASE  
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This **SCHEDULED AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING LEASE**, hereinafter referred to as the "Agreement," made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Sarasota Manatee Airport Authority, a public and governmental body, existing under and by virtue of the laws of the State of Florida, 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 is owner and operator of Sarasota Bradenton International Airport located in Sarasota and Manatee Counties, Florida, and has the right to lease portions of such Airport and to grant operating privileges thereon subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, Airline is a corporation primarily engaged in the business of providing Air Transportation with respect to persons, cargo, and mail; and

**WHEREAS**, both Authority and Airline desire to enter into this Agreement to set forth the rights, privileges, and obligations of both parties and to facilitate the development, promotion, and improvement of air commerce;

**NOW, THEREFORE**, in consideration of the mutual covenants and considerations herein contained, Authority and Airline agree as follows.

**Article 1**

**DEFINITIONS**

**Section 1.01. Definitions**

The words and phrases recited in this Section 1.01 shall have the following meanings when used elsewhere in this Agreement.

1. "**Air Transportation**" shall mean the carriage of persons, property, cargo, and mail by aircraft and all other activities reasonably related thereto.

2. "**Aircraft Arrival**" shall mean any aircraft arrival at the Airport (including, without limitation, scheduled, charter, sightseeing, test, ferry, courtesy, and inspection flights, or any other flights) operated by an Air Transportation company. Aircraft Arrival shall not include any flight that returns to the Airport because of mechanical, meteorological, or other precautionary reason.

3. "**Airline**" means the entity that has executed this Agreement and is identified in the first paragraph of this Agreement. This definition shall include subsidiaries and other affiliated companies only in instances where Airline is the owner of the majority interest in such subsidiary or affiliated company and Airline gives written notice to Authority that Airline wishes for Authority to regard such subsidiary or affiliated company as an "Airline" hereunder.

4. "**Airport**" shall mean Sarasota Bradenton International Airport, as described in Exhibit A, as it now exists or as it may change from time to time.

5. "**Airport System**" means the real property and airport and aviation facilities constituting the existing Sarasota Bradenton International Airport described in Exhibit A hereto, any additional facilities, and any airports and aviation facilities added to the Airport System as defined in the Bond Resolution (Master Resolution) of Authority dated December 20, 1984, as amended and restated.

6. "**Airport System Cost Centers**" shall mean the following cost centers, which, except for Reliever Airport, are more fully described in Exhibit B. Such cost centers shall be used for purposes of accounting for Airport System Revenue and Expense and for calculating and adjusting certain rentals and fees set forth in this Agreement.

a. "**Airfield Area**" shall mean those areas on the Airport that provide for the landing, takeoff, taxiing, parking, or other operations of aircraft, and the approach and clear zones, infield areas, and navigational aids.

b. "**Apron Area**" shall mean the paved aircraft ramp area adjacent to the Terminal Building that provides for the parking, loading, unloading, and servicing of aircraft.

c. "**Terminal Building**" shall mean the passenger terminal building serving the traveling public.

d. "**Terminal Area**" shall mean the access roads and parking areas serving the Terminal Building.

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e. **"Other Buildings and Areas"** shall mean those portions of the Airport not included in the preceding Airport System Cost Centers, including the facilities, installations, and improvements thereon.

f. **"Reliever Airport"** shall mean any general aviation reliever airport, other than the Airport, hereafter owned or operated by Authority, provided that the parties hereto agree that such general aviation reliever airport is needed as a reliever to the Airport.

7. **"Airport System Expense"** shall mean all costs and expenses incidental to, necessary for, or arising out of the operation of the Airport System, including but not limited to direct and allocated indirect Operation and Maintenance Expenses; Annual Debt Service; Coverage; amortization of assets created, purchased or constructed after September 30, 1999 that were funded by Authority; required reserve account funding and replenishment; and the cost of defending, settling, or satisfying any litigation or threatened litigation that relates to the Airport System, or any aspect thereof, except with respect to litigation between the Authority and any one or more of the Signatory Airlines whereby the Signatory Airline is seeking to enforce against the Authority its rights under this Agreement or a substantially similar agreement, or to enforce the Authority's compliance with applicable law, provided that such Signatory Airline or group thereof is the prevailing party in such litigation.

8. **"Airport System Revenue"** shall mean all revenues, rentals, charges, landing fees, user charges, and concession revenues received by or on behalf of Authority in connection with the operation of the Airport System or any part thereof, excluding all gifts, grants, reimbursements, restricted funds or payments received from governmental units, or public agencies, or any other similar source. Airport System Revenue shall not include any revenue or income from (1) any Special Purpose Facility to the extent such revenue or income is either (a) pledged to pay principal, interest, or other charges for bonds or other obligations issued in anticipation thereof; or (b) for the use of Authority in reimbursement of costs incurred by it in the construction or provision of Special Purpose Facilities, or (2) any income earned on the investment of the moneys in the General Purposes Account. However, ground rentals for Special Purpose Facilities shall be considered Airport System Revenue.

9. **"Annual Debt Service"** shall mean the total amount required to be deposited in any Fiscal Year to any Interest, Principal, or Sinking Fund Accounts established by the Bond Resolution for any Bonds issued for the Airport System.

10. **"Annual Budget"** shall mean the Airport System capital and operating budget prepared by the Executive Director and adopted by Authority.

11. **"Bond Resolution"** shall mean the Master Resolution of Authority dated December 20, 1984, as amended and restated, and any Series Resolution authorizing the issuance of Bonds, other than Special Purpose Facility Bonds, payable from Airport System Revenue.

12. **"Bonds"** shall mean Airport System revenue bonds (and related financing instruments), both serial and term, heretofore and hereinafter issued by Authority, or any other similar or substitute financing instrument (including but not limited to notes, certificates, commercial paper and related financing instruments) that might be issued under the Bond Resolution for future Airport System purposes.

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13. "**Capital Improvement**" shall mean any single item having a cost or estimated to have a total cost in excess of Twenty Five Thousand Dollars (\$25,000) and a useful life in excess of one year, acquired, purchased, or constructed to improve, maintain, or develop the Airport System. Said term shall include any expense for development studies, analyses, master planning efforts (including periodic reviews thereof), and economic or operational studies of the Airport System.

14. "**Common Use Formula**" shall mean a formula that is used to prorate twenty percent (20%) of the rental cost of space equally among those airlines using the space (the "fixed" portion of the allocation) and eighty percent (80%) of the rental cost on the basis of that proportion which the number of each airline's Deplaned Passengers at the Airport bears to the total number of Deplaned Passengers of all such airlines at the Airport (the "variable" portion of the allocation); provided, however, that for the purposes of this calculation, charter airlines using the Authority's designated "charter/international gate" shall not be included in the "fixed" portion of the allocation.

15. "**Coverage**" shall mean, for any series of Bonds, the percentage of the Annual Debt Service that Authority covenants to generate from net revenues, over and above the Annual Debt Service of such series of Bonds, pursuant to the Bond Resolution. Said term shall also mean the dollar amount computed by multiplying said percentage by the Annual Bond Debt Service for such series of Bonds.

16. "**Deplaned Passengers**" shall mean all terminating passengers and on-line or off-line transfer passengers deplaning at the Airport but excluding through passengers and non-revenue passengers.

17. "**Enplaned Passengers**" shall mean all local boarding, and on-line or off-line transfer passengers enplaning at the Airport but excluding through passengers and non-revenue passengers.

18. "**Executive Director**" shall mean the person designated by Authority to exercise functions with respect to the rights and obligations of Authority under this Agreement. Said term shall also include any person expressly designated by Authority to exercise functions with respect to the rights and obligations of the Executive Director under this Agreement.

19. "**FAA**" shall mean the Federal Aviation Administration of the U.S. Government or any federal agencies succeeding to its jurisdiction.

20. "**Fiscal Year**" shall mean the twelve month period beginning October 1 of any year and ending September 30 of the following year or any other period specified by federal or State law.

21. "**Gates**" shall mean aircraft parking positions at the Terminal Building together with holdroom areas and loading bridges and shall include preferential use of the podium and associated facilities for the Gate.

22. "**Improvements Appropriation**" shall mean the amount designated in the Authority's budget each Fiscal Year for deposit to the Improvements Account, as required under Section 5.01.(j) of the Bond Resolution, which for the term of this Agreement shall equal a percentage rate of all nonairline operating revenues (total Airport System Revenue less airline rents, fees, and charges, interest income, gains on sale or disposition of assets, and other nonoperating revenues). Said percentage rate shall be equal to 10% effective October 1, 2009. Effective October 1, 2010, the percentage rate shall be increased by one percentage point and each year thereafter up to a maximum of 15%.



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23. "**Joint Use Formula**" shall mean a formula that is used to prorate twenty percent (20%) of the rental or cost of a space among those airlines using or having the right to use such space on the basis of that proportion which the number of each airline's Preferential Use Gates bears to the total number of Preferential Use Gates of all such airlines (the "fixed" portion of the allocation) and eighty (80%) percent of the rental or cost of such space on the basis of that proportion which the number of each airline's Enplaned Passengers bears to the total number of Enplaned Passengers of all such airlines at the Airport (the "variable" portion of the allocation); provided, however, that for the purposes of this calculation, charter airlines using the Authority's designated "charter/international gate" shall not be included in the "fixed" portion of the allocation.

24. "**Maximum Gross Certificated Landing Weight**" shall mean the maximum weight, in thousand (1,000) pound units, at which each aircraft operated by Airline is certificated by the FAA to land at the Airport.

25. "**Operation and Maintenance Expenses**" shall mean Authority's current annual expenses of maintaining, operating, repairing, and administering the Airport System, including taxes and assessments, if any, as set forth in the current Annual Budget of Authority.

26. "**Personal Property**" shall mean the trade fixtures, equipment, conveyors, inventory, furniture, or supplies owned or leased by Airline (from a party other than Authority) and installed or used at the Airport in the conduct of Airline's Air Transportation business that are removable from Airline's leased premises without substantial or permanent injury or damage to the leased premises.

27. "**Preferential Use Gates**" shall mean those Gates assigned to Signatory Airlines.

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

29. "**Rentable Space**" shall mean the total of space available to rent for Airline use plus concession use.

30. "**Rules and Regulations**" shall mean those reasonable and nondiscriminatory rules, regulations, and ordinances promulgated by Authority, as the same may be amended, modified, or supplemented from time to time to the extent that such rules, regulations, and ordinances are not inconsistent with the provisions of this Agreement.

31. "**Signatory Airline**" shall mean an airline providing scheduled Air Transportation to and from the Airport that has executed an agreement substantially similar to this agreement with Authority covering the use and occupancy of facilities at the Airport and that has committed in such agreement to lease at least one Preferential Use Gate and one ticket area module (ticket counter area with at least four check-in positions together with associated ticket office and baggage make-up space to a depth of 100 feet).

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32. "**Special Purpose Facility**" shall mean any specific improvement undertaken by Authority for the benefit of one or more airlines or other Airport System tenants under the terms of a separate agreement that provides for, among other things (a) the payment of rentals or fees for the use or occupancy thereof in sufficient amounts to permit the financing of such improvement and payment of all costs thereof solely from such rentals or fees, and (b) the payments of the maintenance and operating cost of such improvement by the tenant or tenants thereof.

33. "**Terminal Building Premises**" shall mean those areas of the Terminal Building leased on an exclusive use, common use, or joint use basis by airlines providing Air Transportation at the Airport.

34. "**Total Landed Weight**" shall mean the sum of the Maximum Gross Certificated Landing Weight for all of Airline's Aircraft Arrivals over a stated period of time. Said sum shall be rounded up to the nearest one thousand (1,000) pound unit for all landing fee computations.

35. "**Total Landed Weight of the Signatory Airlines**" shall mean the sum of the Maximum Gross Certificated Landing Weight for all of the Signatory Airlines' Aircraft Arrivals over a stated period of time.

**Section 1.02. Cross-References**

All references in the text of this Agreement to articles, sections, and exhibits pertain to articles, sections, and exhibits in this Agreement, unless otherwise specified.

**Article 2**

**USE OF AIRPORT AND FACILITIES**

**Section 2.01. Permitted Uses**

A. Subject to the terms and provisions hereof and the Rules and Regulations, Airline shall be entitled to the use, in common with others authorized to do so, of the Airport and appurtenances (together with all facilities, equipment, improvements, and services that have been or may hereafter be provided at or in connection with the Airport for common use) for the sole purpose of its conduct of Air Transportation. Said use, without limiting the generality hereof, shall include:

1. The operation of an Air Transportation system by aircraft for the carriage of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.
2. The landing, taking off, flying over, taxiing, towing, loading, and unloading of aircraft passengers, property, and other equipment used by Airline in its conduct of Air Transportation.
3. The repairing, maintaining, conditioning, servicing, testing, or parking of aircraft or aircraft-related equipment operated by Airline or any other Air Transportation company in designated areas; provided that such right shall not be construed as authorizing the conduct of a separate business by Airline but shall permit Airline to perform such functions only as an incident to its conduct of Air Transportation.
4. The ground training on the Airport of personnel in the service of, or the employ of, or to be employed by Airline; provided that such right shall not be construed as authorizing the conduct of a separate business by Airline but shall permit Airline to perform such functions only as an incident to its conduct of Air Transportation.
5. The sale, lease, transfer, disposal, or exchange of Airline's engines, accessories, and other equipment or supplies; provided that such right shall not be construed to (a) permit Airline to accumulate or store used equipment at the Airport, or (b) authorize the conduct of a separate business by Airline but shall permit Airline to perform such functions only as an incident to its conduct of Air Transportation.
6. The servicing by Airline of aircraft and other equipment operated by Airline or an agent of its choosing on the apron, by truck or otherwise, with aviation fuel, propellants, lubricants, or any other materials or supplies.
7. The installation and operation of identifying signs locating Airline's facilities. Such signs shall be consistent with Authority's graphic and sign standards, subject to the prior written approval of Authority, and in compliance with all local laws and ordinances.
8. The installation, maintenance, and operation, by Airline alone or in conjunction with any other airlines, or through a designee, of both air-to-ground communications and communications systems between suitable locations on the Airport, subject to the prior written approval of Authority.

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9. The ground handling of any portion of the operations of another airline, provided that Airline shall give Authority advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the provisions of the foregoing sentence, Airline shall not supply ground handling services to another airline without the prior written approval of Authority if such airline does not have in force an operating agreement or permit with Authority. No such ground handling agreement shall release Airline from its obligations to pay the rentals, and fees provided for herein.

10. The customary fueling, servicing, and line maintenance of aircraft at assigned aircraft parking positions preparatory to loading and taking off or following landing or unloading. Airline will perform maintenance of aircraft, vehicles, or equipment at places designated by Authority.

11. The installation of equipment necessary to operate Airline's Air Transportation business. The manner and location of such installations shall be subject to prior approval by Authority.

12. The purchase of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice, and the making of agreements with any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's Air Transportation business. Nothing herein shall restrict Authority from levying a nondiscriminatory concession fee for in-flight catering on any person or company, other than Airline.

B. Any and all rights and privileges not granted to Airline under this Agreement are hereby reserved for and to Authority. Airline may exercise on behalf of any other airline having an agreement permitting operations at the Airport any of the rights granted Airline under the terms of this Agreement, so long as Airline is concurrently exercising those rights in the conduct of Airline's own Air Transportation business.

C. The rights granted in this Section 2.01 shall not be construed as permitting any other person or corporation to conduct any business on the Airport (including the space leased to Airline) except after first securing from Authority a license to conduct such business and by the payment of applicable rentals and fees.

**Article 3**

**LEASED PREMISES**

**Section 3.01. "Airline's Leased Premises" Defined**

**A. Exclusive Use Space**

As used in this Agreement, the phrase "Airline's Exclusive Use Space" (or words of similar import) shall mean only those premises that are leased by Authority to Airline for its exclusive use in the Terminal Building.

**B. Preferential Use Space**

Preferential Use Space shall mean the holdroom area leased by Authority to Airline for its preferential use in the Terminal Building.

**C. Joint Use Space**

Joint Use Space shall mean those premises that are used by airlines for their joint use (principally, the security checkpoint area and the circulation area in the Terminal Building concourse).

**D. Common Use Space**

Common Use Space shall mean those premises that are used by all airlines for their common use (principally, the baggage claim area of the Terminal Building).

**E. Preferential Apron Area**

Preferential Apron Area is the area preferentially assigned to an airline for the parking of its aircraft.

**Section 3.02. Use of Terminal Building Premises**

Airline shall be entitled to exclusive, preferential, joint, and common use of the portions of the Terminal Building Premises designated in Exhibit C during the term of this Agreement for the following purposes.

**A. Exclusive Use Space**

1. As to the portion thereof designated "ticket counter" in Exhibit C.
  - a. For reserving space and selling tickets for Air Transportation of passengers and the processing small package delivery by Airline.
  - b. For furnishing information to such passengers and the general public.

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- c. For checking baggage of Airline's enplaning passengers.
  - d. For handling lost and found articles.
2. As to the portion thereof designated "office area" in Exhibit C:
  - a. For administrative, customer service, and other office purposes in connection with Airline's business.
  - b. For passenger and customer relations.
  - c. For handling lost and found articles.
3. As to the portion thereof designated "baggage makeup space" in Exhibit C:
  - a. For assembling, handling, and dispatching enplaning passenger baggage.
  - b. For storing materials permitted to be stored in the building under general rules prescribed by Authority for safety, sanitation, or good order.
4. As to the portion thereof designated "airline operations" in Exhibit C:
  - a. For Airline operations office.
  - b. For a baggage hold area.
  - c. For storing of equipment and catering supplies.
  - d. For crew space and weather, dispatch, and communications functions.
  - e. For handling lost and found articles.
5. As to the portion thereof designated "airline bag claim offices" in Exhibit C:
  - a. For storing, and processing claims, for mishandled, damaged, or misplaced baggage.

### **B. Preferential Use Space**

1. As to the portion thereof designated "holdroom" in Exhibit C:
  - a. For selling, issuing, and collecting passenger tickets and for the issuing of seat assignments.
  - b. For a waiting area for passengers boarding an aircraft.
  - c. For checking passengers and the "last minute" check-in of baggage.
  - d. For furnishing information to passengers and the general public.

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- e. For installing and displaying of Airline corporate identification on the check-in podium and background screen.

### C. Joint Use Space

1. As to the portion thereof designated "boarding area circulation" in Exhibit C:
  - a. For the circulation of passengers, employees and the general public between the main terminal and aircraft Gates.
2. As to the portion thereof designated as "security checkpoint" in Exhibit C.:
  - a. For providing required security clearance of enplaning passengers.

### D. Common Use Space

1. As to the portion thereof designated "baggage claim" in Exhibit C:
  - a. For delivery and displaying inbound passenger baggage and for an access and waiting area for passengers to claim their baggage.

### Section 3.03. Reassignment of Leased Premises

Airline and Authority recognize that, from time to time during the term of this Agreement, it may become necessary to reassign, reallocate, or relocate part or all of the premises referred to in Article 3. Authority may only make such reassignment, reallocation, or relocation for the following reasons:

- A. To comply with a rule, regulation, or order of any federal, state, or other governmental agency (other than Authority) that has jurisdiction over Authority.
- B. To implement a Capital Improvement at the Airport which has been approved by the Signatory Airlines according to the provisions of Article 8.

If it becomes necessary to make adjustments in Airline's Exclusive or Joint Use Space, Authority shall arrange for all parties holding affected space to discuss reassignment, reallocation, or relocation of their space among themselves. If the parties do not reach agreement within thirty (30) days from the time Authority requests such discussions, Authority is authorized to make such decisions regarding reassignment, reallocation, or relocation for each of the parties (including Airline). If Authority makes decisions regarding reassignment, reallocation, or relocation of Airline's leased premises, Airline shall not be required to:

- C. Incur any direct expense to relocate its operation to other premises that it does not agree to incur.
- D. Accept premises not reasonably adequate based on conditions at the Airport.

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- E. Pay at its new location rental rates in excess of that amount it would have been required to pay in its original leased premises.

If Authority is to reassign, reallocate, or relocate Airline's leased premises, Authority shall give Airline notice of its intent to modify all or portions of Airline's leased premises. This notice may be issued before the end of the thirty-day negotiating period. Airline shall be given an opportunity to meet with the Executive Director to show cause why the reassignment, reallocation, or relocation should not be made.

If Airline does not elect to meet with the Executive Director within fourteen days from the issuance of the notice of intent to modify leased premises, or if the Executive Director elects to proceed with the reassignment, reallocation, or relocation after meeting with Airline, Authority shall:

- F. Give Airline sixty days' notice of the reassignment, reallocation, or relocation.
- G. Reimburse Airline the undepreciated capital cost of Airline's improvements in the space vacated.
- H. Make improvements and alterations necessitated by the reassignment, reallocation, or relocation, the cost of which shall not be the responsibility of Airline.
- I. Reassign or reallocate the space in question to another airline or relocate Airline's leased premises or hold space without lease commitment.



**Article 4**

**TERM**

**Section 4.01. Term**

The term of this Agreement shall commence October 1, 1999, and terminate September 30, 2014 subject to the termination provisions of Article 13.

**Section 4.02. Effectiveness**

This Agreement shall be effective when executed by the parties hereto; provided, however, that if at least four airlines accounting for at least 50% of the total landed weight at the Airport in the Fiscal Year ended September 30, 1998, have not executed substantially similar agreements as this Agreement on or before October 1, 1999, Airline may cancel this Agreement by giving notice to Authority no later than October 15, 1999. If such threshold is reached, or if the threshold is not reached but Airline fails to give such notice when due, this Agreement shall continue in full force and effect.

**Section 4.03. Holding Over**

A. In the event Airline shall continue to occupy the leased premises beyond the term of this Agreement or any extension thereof without Authority's written renewal thereof, such holding over shall not constitute a renewal or extension of this Agreement, but shall create a tenancy from month to month that may be terminated at any time by Authority or Airline by giving thirty days written notice to the other party.

B. Airline further agrees that upon the expiration of the term of this Agreement or sooner cancellation thereof, the leased premises shall be delivered to Authority in good condition, reasonable wear and tear and damage from any casualty occurrence excepted.

**Section 4.04. Incentive Payments**

As an incentive to Airline to execute, become a Signatory Airline, and continue to provide air service at the Airport, the Authority shall pay to Airline, or credit against future billings at Airline's option, incentive payments as follows:

- A. \$50,000 within 30 days of receipt by Authority of Airline's executed copy of the Agreement, and;
- B. \$50,000 on or about November 1, 2000, provided that during the Fiscal Year ending September 30, 2000, Airline provides at least as many scheduled departures at the Airport as it provided in the Fiscal Year ended September 30, 1999

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The Incentive Payments described in paragraphs A and B above will each decrease by 20% on October of each year this Agreement is in effect until the final year begins, October 1, 2003, when no Incentive Payments shall be offered. Further, for any agreement executed after October 1, 1999, the time period indicated in paragraph B, for payment of the second Incentive Payment, shall be defined to be the twelve month period immediately following the execution date of the Agreement

**Article 5**

**RENTALS AND FEES**

**Section 5.01.     Rentals and Fees**

Airline agrees to pay Authority, without notice or demand and without deduction or setoff, all applicable rentals, additional rentals, charges, and fees (hereinafter referred to collectively as "Rentals and Fees") during the term of this Agreement for its use of the Airport System, rights, licenses, and privileges granted hereunder.

**Section 5.02.     Terminal Building Rentals**

A. Airline shall pay to Authority, for the use of its Exclusive Use Space and Preferential Use Space, monthly amounts determined by multiplying the total square footage of Airline's Exclusive Use Space and Preferential Use Space by the annual Terminal Building rental rate calculated in accordance with Section 6.04 and dividing by twelve (12).

B. Airline shall pay to Authority, for the shared use of the Joint Use Space and Common Use Space monthly amounts determined by:

1. For space designated "boarding area circulation" and "security checkpoint" in Section 3.02.B.1 and 3.02.B.2, multiplying the total square footage of such space by the annual Terminal Building rental rate calculated in accordance with Section 6.04, dividing the amount so obtained by twelve (12), and then applying the Joint Use Formula, and

2. For space designated "baggage claim" in Section 3.02.C.1, multiplying the total square footage of such space by the annual Terminal Building rental rate calculated in accordance with Section 6.04, dividing the amount so obtained by twelve (12), and then applying the Common Use Formula.

C. For the purposes of applying the Joint Use Formula and the Common Use Formula, Authority will use statistics for the third preceding month. If Airline fails to supply statistics as required in Section 5.04 B., then one hundred twenty five percent of the most recent enplaned passenger statistics available for Airline shall be used for that billing. Correction to actual will occur on receipt of statistical report or at the year-end adjustment, whichever is more convenient for Authority.

**Section 5.03.     Preferential Apron Area Rentals**

Airline shall pay to Authority, for the use of its Preferential Apron Area, monthly rentals determined by multiplying the total linear footage of Airline's Preferential Apron Area by the annual Preferential Apron Area rental rate—(calculated in accordance with Section 6.05 and dividing by twelve (12).

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### **Section 5.04 Non-Preferential Gate Use Fee**

Airline shall pay to Authority a Non-Preferential Gate Use Fee for (1) each use of an unassigned Gate and (2) each use of a Preferential Use Gate that is not assigned to Airline, which fee shall be calculated in accordance with Section 6.06.

### **Section 5.05. Landing Fee**

A. Following the effective date of this Agreement, rentals and fees for the use of the other Airport facilities, and for rights, licenses, and privileges granted to Airline under Articles 2 and 3 hereunder, except as provided elsewhere herein, shall be combined in and represented by a monthly landing fee (hereinafter referred to as the "Landing Fee"), which shall be determined by multiplying Airline's Total Landed Weight for the month by the annual Landing Fee rate per thousand pound unit of landed weight.

B. Airline shall furnish to Authority, on or before the tenth day of each month, an accurate verified report, on forms prescribed by Authority, including the following: (1) Airline's total number of Aircraft Arrivals, by type of aircraft and Maximum Gross Certificated Landing Weight of each type of aircraft, (2) the number of Enplaned and the number of Deplaned Passengers, and (3) the amount of freight, mail, and other cargo for the preceding month.

D. The Authority hereby waives landing fees for all existing signatory air carriers presently serving the Sarasota Bradenton International Airport for a period of three months effective October 1, 2001 provided the signatory carrier remains current on all other airport rental and fee payments.

### **Section 5.06 Time and Place of Payments**

A. Rentals. Rentals for Exclusive Use Space, Preferential Use Space and Preferential Apron Area Rentals shall be payable in equal monthly installments, in advance, on or before the first business day of each month. Rentals for Joint Use Space and Common Use Space shall be payable in advance on or before the first business day of each month (prorated according to Section 5.02(B)). The rental rates shall be subject to adjustment as provided in Article 6.

B. Landing Fees. Landing Fees shall be due on the first day of each month, payable no later than the twentieth day of each month, for the preceding calendar month of operations and shall be subject to adjustment as provided in Article 6.

C. The above payments shall be made at the office of the Sarasota Manatee Airport Authority, Sarasota, Florida, or other such place as may hereafter be designated by Authority.

### **Section 5.07. Passenger Facility Charge (PFC)**

Nothing in this Agreement shall limit Authority's right to impose on Airline's passengers a Passenger Facility Charge ("PFC") authorized under Section 1113(e) of the Federal Aviation Act of 1958, as amended by Section 9110 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 49

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U.S.C. App Paragraph 1513) and the rules and regulations promulgated thereunder (14 C.F.R. Part 158), as may be amended from time to time (“PFC Regulations”).

Airline agrees to cooperate with Authority in the collection of such charge and to collect and remit such charges to Authority as provided in the PFC Regulations. Authority shall apply any such PFC revenues to the improvement of the Airport System or to the retirement of Airport System debt as required by the PFC Regulations.

### **Section 5.08. Airline Records**

A. Airline shall keep and maintain a complete and adequate set of records concerning its landed weights for a period of three years from the date of such activity. If such records are maintained at a location other than Airline's leased premises, such records shall be retrievable within ten business days.

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

### **Section 5.09. Interest on Past Due Accounts**

There shall be added to all unpaid sums due Authority an interest charge of two percentage points in excess of the prime lending rate as published in the Wall Street Journal on the principal sum, computed as simple interest, not to exceed the highest applicable interest rate permitted under State of Florida law. No interest shall be charged on any past due account until Airline has been contacted and given an opportunity to cure and payment is thirty days past due, but such interest when assessed thereafter shall be computed from the due date.

### **Section 5.10. No Further Fees and Charges**

Following the effective date of this Agreement, except as provided elsewhere herein, upon the payment of the rents and fees described herein, no additional charges will be levied against Airline for the use of the Airport and the occupancy of facilities described in Article 3, except as provided by separate agreement between the parties.

**Article 6**

**RECALCULATION OF RENTALS AND FEES**

**Section 6.01. Effective Date of Recalculations**

Rentals and Fees as set forth in Article 5 shall be adjusted annually during the term of this Agreement as hereinafter set forth. Said adjustments to Rentals and Fees pursuant to this Article 6 shall apply without the necessity of formal amendment to this Agreement. A statement showing the recalculation of the new rates for rentals and fees, prepared in the same format as shown in Exhibit D, shall be prepared and transmitted to Airline by the Executive Director within thirty days after adoption by Authority. Said statement shall then be deemed part of this Agreement and effective on the first day of each Fiscal Year to which such rentals and fees apply.

**Section 6.02. Records of Airport System Cost Centers**

A. Authority shall maintain accounting records that will document the following items for each Airport System Cost Centers: (1) Airport System Revenue, (2) Airport System Expenses, and (3) other expenses of Authority.

B. Authority shall further maintain records evidencing the allocation of capital funds obtained from the proceeds of the sale of Bonds or other capital fund sources to each Airport System Cost Center. Included in the allocation to each Airport System Cost Center shall be that cost center's proportionate share of the expense of Bond issuance, capitalized interest, and funding of special funds, determined with reference to the allocation of costs funded through Bond proceeds or other capital fund sources.

**Section 6.03. Authority Report**

A. On or before May 1 of each Fiscal Year, Authority shall provide Airline with a budget calendar establishing dates for the Signatory Airlines to review the Annual Budget.

B. On or before June 1 of each Fiscal Year, Airline shall submit to Authority, in writing, a forecast of its Maximum Gross Certificated Landing Weight for the succeeding Fiscal Year. If such forecast is not submitted by Airline, the Authority will develop its own forecast of Maximum Gross Certificated Landing Weight for the succeeding Fiscal Year.

C. Not later than August 1 of each Fiscal Year, Authority shall submit to each of the Signatory Airlines a report containing the following:

1. Authority's proposed Annual Budget for the succeeding Fiscal Year reflecting all estimated Airport System Operation and Maintenance Expenses and all proposed outlays for Airport System Capital Improvements for the succeeding Fiscal Year that are not otherwise separately scheduled. The proposed Annual Budget shall include a statement of all estimated Airport System Revenue.

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2. A schedule of Annual Bond Debt Service payments required to be made during the succeeding Fiscal Year, plus Coverage.
3. Any required deposits to any funds or accounts established by the Bond Resolution.
4. A preliminary calculation of the Rentals and Fees for the succeeding Fiscal Year.

D. Within thirty days after receipt of Authority's report, a meeting will be scheduled between Authority and the Signatory Airlines, at which time the Signatory Airlines may comment on any items within the report. Authority shall give consideration to any suggestions, comments or requests of the Signatory Airlines, but shall retain full authority to make all final decisions with respect to the report, except as provided for in Article 8.

E. If an Annual Budget is not adopted by Authority before any such Fiscal Year, the rentals and fees in effect during the preceding Fiscal Year shall remain in effect until (1) a new Annual Budget has been adopted by Authority, and (2) Authority has calculated the rentals and fees in accordance therewith. The recalculated rentals and fees shall then be in effect retroactive (without interest if paid by the due date) to the beginning of such Fiscal Year.

F. Whenever the adjustment calculation involves an estimate, the estimate of Authority shall be used, which estimates shall be based on past performance and reasonable and prudent future expectations. Whenever the adjustment calculation involves an estimate contained in the Annual Budget, the estimate in the Annual Budget figure shall be used.

### **Section 6.04. Calculation of Terminal Building Rental Rates**

Terminal Building rental rates shall be established and thereafter adjusted annually in the following manner.

A. Each year Authority shall calculate the Terminal Building Costs for the succeeding Fiscal Year by totaling the following amounts, as set forth in the Annual Budget:

1. The total of the direct and indirect Operation and Maintenance Expenses allocable to the Terminal Building.
2. Annual Bond Debt Service (plus Coverage) allocable to the Terminal Building, as required by the Bond Resolution.
3. The amount of any deposits to any funds and accounts required by the Bond Resolution and allocable to the Terminal Building.
4. The annual amortization of the amount allocable to the Terminal Building of any expenditures made by Authority before October 1 of the adjustment year for Capital Improvements in or allocable to the Terminal Building financed by Authority from the Authority Sub-Account of the General Purposes Account. Such amortization shall be calculated using an interest rate equal to the ten year Treasury constant maturity rate as

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found in the Federal Reserve Board publication H.15 or G.13 for July of the year preceding the adjustment year (Amortization Rate) and using the useful life of each capital item as determined by Authority in accordance with generally accepted accounting principles. No Amortization shall be charged for Capital Improvements made from the Improvements Account.

5. Fifty percent (50%) of the direct and indirect costs allocable to the Terminal Area.
6. Any other Airport System Expense allocable to the Terminal Building not included in Sections 6.04(A)(1) through 6.04 (A)(5).

B. Each year Authority shall calculate the Terminal Building Requirement for the succeeding Fiscal Year by subtracting from the Terminal Building Costs as calculated in Section 6.04(A), (1) concession revenue from advertising, restaurants and gift shops and other Terminal Building concessions; and (2) non-airline Terminal Building space rentals.

C. An average Terminal Building rental rate shall then be calculated by dividing the Terminal Building Requirement computed pursuant to Section 6.04(B) by the amount of Rentable Space in the Terminal Building. This average rental rate shall be multiplied by the total amount of space leased by all Airlines to determine the total annual airline Terminal Building rental requirement.

D. Authority, in consultation with the Signatory Airlines, may determine a schedule of rental rates by class of space in the Terminal Building so that the sum of the products obtained by multiplying the total amount of space leased by the Signatory Airlines as of October 1 of the succeeding Fiscal Year by the rental rate for the appropriate class of space will equal the total annual airline Terminal Building rental requirement for the Fiscal Year computed pursuant to Section 6.04(C).

### **Section 6.05. Calculation of Preferential Apron Area Fee**

The Preferential Apron Area fee—shall be established and thereafter adjusted annually in the following manner:

A. Each year Authority shall calculate the Apron Area Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in the Annual Budget:

1. The total of the direct and indirect Operation and Maintenance Expenses allocable to the Apron Area.
2. Annual Bond Debt Service (plus Coverage) allocable to the Apron Area, as required by the Bond Resolution.
2. The amount of any deposits to any funds and accounts required by the Bond Resolution and allocable to the Apron Area.
4. The annual amortization of the amount allocable to the Apron Area, of any expenditures made by Authority before October 1 of the adjustment year for Capital Improvements in,



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or allocable to the Apron Area financed by Authority from the Authority Sub-Account of the General Purposes Account. Such amortization is to be computed using the Amortization Rate and the useful life of each capital item as determined by Authority in accordance with generally accepted accounting principles. No Amortization shall be charged for Capital Improvements made from the Improvements Account.

5. Any other Airport System Expense or allocable to the Apron Area not included in Sections 6.05(A)(1) through 6.05(A)(4).

B. The Preferential Apron Area rental rate shall then be calculated by dividing the Apron Area Requirement computed pursuant to Section 6.05(A) by the number of linear feet measured one hundred (100) feet from the concourse.

### **Section 6.06. Non-Preferential Gate Use Fee**

A Non-Preferential Gate Use Fee shall apply to Airline's use of any Gate that is not assigned to Airline or is not Airline's Preferential Use Gate, and shall be calculated by Authority as illustrated in Exhibit E.

### **Section 6.07. Calculation of Signatory Airline Landing Fee Rate**

The Landing Fee rate shall be established and thereafter adjusted annually in the following manner.

- A. Each year Authority shall calculate the Airport System Expense for the succeeding Fiscal Year by totaling the following amounts, as set forth in the Annual Budget:
  1. The total of the direct and indirect estimated Operation and Maintenance Expenses of the Airport System.
  2. An amount equal to the Airport System Annual Debt Service (plus Coverage), as required by the Bond Resolution.
  2. The amount of any deposits to any funds and accounts required by the Bond Resolution.
  4. The annual amortization of the total amount of any expenditures made by Authority before October 1 of the adjustment year for Airport System Capital Improvements financed by Authority from the Authority Sub-Account of the General Purposes Account. Such amortization is to be computed using the Amortization Rate and the useful life of each capital item as determined by Authority in accordance with generally accepted accounting principles. No Amortization shall be charged for Capital Improvements made from the Improvements Account.
  5. Any other Airport System Expense not included in Sections 6.06(A)(1) through 6.06(A)(4).

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B. The Airport System Requirement for the succeeding Fiscal Year shall be calculated by subtracting from total Airport System Expense (1) total Airport System Revenue (including Airline Terminal Building Rentals and Preferential Apron Area Fees, but excluding Signatory Airline Landing Fees) and (2) the balance available in the Prepaid Airline Revenue Subaccount, as set forth in the Annual Budget.

C. The Signatory Landing Fee rate for the succeeding Fiscal Year shall be calculated by dividing the Airport System Requirement by the Total Landed Weight of all Signatory Airlines at the Airport for the succeeding Fiscal Year as projected by Authority. For the purpose of this section, any regional and/or commuter airline which (a) has executed a standard regional/commuter airline use and lease agreement with the Authority and uses the regional/commuter gate area of the Terminal or (b) has not signed a use and lease agreement with the Authority but has a code-sharing agreement with a signatory Airline and is handled by such Signatory Airline at the Signatory Airline's gate(s) shall be considered a Signatory Airline for the purposes of establishing and charging landing fees, and the landed weight of such regional/commuter airlines shall be included in the Total Landing Weight divisor used in calculating the Signatory Airline landing fee rate.

### **Section 6.08. Extraordinary Adjustments of Landing Fee Rate**

A. Notwithstanding any other provisions hereof, if, at any time during the term of this Agreement, the revenues (and the reserves designated for such purposes) of the Airport System are not sufficient to pay, when due, all items included in the Authority reports prepared pursuant to Section 6.03, or to pay any other Airport System Expense incidental or necessary to, or arising out of, the operation of the Airport System, including, without limitation, emergency repairs or expenses that relate to the Airport System or any aspect thereof, or to compensate for the loss of revenue by reason of any labor dispute, Authority may, on notice to and consultation with the Signatory Airlines, increase the Landing Fee to such amount as is sufficient to assure Authority that all such items, expenses, and costs shall be paid in full, solely from the revenues of the Airport System.

B. If total Landing Fees of all Signatory Airlines for any quarter vary more than ten percent from the projected total Landing Fees for such quarter (adjusted for seasonality), the Landing Fee rate shall, if deemed necessary by Authority, on notice to and consultation with the Signatory Airlines, be adjusted for the balance of such Fiscal Year by an amount equal to the difference between projected and actual total Landing Fees divided by the estimated Total Landed Weight of the Signatory Airlines during the balance of such Fiscal Year.

### **Section 6.09. Year-End Adjustment to Actual and Settlement**

On or about April 1, 2001 and each subsequent year until April 1, 2005, Authority shall furnish Airline with an accounting of the costs and expenses actually incurred, revenues and other credits actually realized, (reconciled to the audited financial statements of the Airport System) and actual enplaned passengers and landed weights during the preceding Fiscal Year with respect to each of the components of the calculation of the Terminal Building rental rate, the Preferential Apron Area Fee rate, and the Landing Fee Rate in this Article 6 and shall recalculate the rates, fees, and charges required for

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the Fiscal Year based on those actual costs and revenues, including the proration of rentals for Common Use and Joint Use Space in accordance with the defined formulas.

If requested by any Signatory Airline, Authority shall convene a meeting of the Signatory Airlines to discuss the calculation of the year-end settlement.

In the event that Airline 's rentals, fees, and charges billed during the Fiscal Year were more than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such excess amount shall be paid to Airline in lump sum within sixty (60) days of the calculation of such final settlement.

In the event that Airline's rentals, fees, and charges billed during the Fiscal Year were less than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such deficiency shall be billed to Airline and payable by Airline within 60 days of the date of invoice.

### **Section 6.10            Landing Fee Rate Mitigation**

In the event, for any Fiscal Year during the term of this Agreement, the Landing Fee Rate is projected to exceed 150% of the rate calculated for the Fiscal Year beginning October 1, 1999 (said 150% amount referred to hereafter as the "Threshold Rate"), Authority shall reduce the amount to be transferred to the Improvements Account for that Fiscal Year, as required under Section 6.06.A(3) and as further described in Section 7.02.B(7), as necessary to compute a required landing fee rate for that Fiscal Year equal to the Threshold Rate; provided, however, that in no event shall such reduction exceed \$500,000 per year. Such reduction in the Improvements Account transfer shall then be recorded on the Authority's balance sheet at the beginning of that Fiscal Year as an advance to (i.e., receivable from) the Signatory Airlines but will accrue no carrying charges or interest. If the calculation of the subsequent Fiscal Year's projected Landing Fee Rate is less than the Threshold Rate, Authority shall charge up to the Threshold Rate until the total has been restored in full to the Improvements Account. If an Improvements Account receivable balance exists at the end of any Fiscal Year and the year-end settlement for that Fiscal Year results in a surplus, such surplus shall be applied to the receivable balance until the total amount has been restored in full to the Improvements Account. If at the expiration of this Agreement, any such receivable balance remains on the Authority's balance sheet, such amount shall be written off by Authority.

**Article 7**

**BOND RESOLUTION: APPLICATION OF REVENUES**

**Section 7.01. Subordination to Bond Resolution**

A. This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made (at any time) by Authority to secure Bond financing. This Agreement is subject and subordinate to the terms, covenants, and conditions of the Bond Resolution authorizing the issuance of Bonds by Authority. Authority may amend or modify the Bond Resolution or make any change thereto that does not materially adversely affect Airline rights under this Agreement. Conflicts between this Agreement and the Bond Resolution shall be resolved in favor of the Bond Resolution.

B. All definitional terms that are not specifically defined herein are to have the meanings set forth in the Bond Resolution.

**Section 7.02. Application of Revenues**

A. Subject to the terms and provisions of the Bond Resolution and other related instruments, it is mutually understood and agreed that, so long as any Bonds secured by the Bond Resolution are outstanding, all Airport System Revenue shall be deposited, maintained, and paid as set forth in the Bond Resolution, as summarized below:

B. Each Fiscal Year, the revenues for that year plus the amount on deposit in the Prepaid Airline Revenue Subaccount (PAR Subaccount) shall be applied in the following manner:

1. To pay Operation and Maintenance Expenses for the Fiscal Year.
2. To make any deposits required to maintain the Operation and Maintenance Reserve at the level required.
3. To pay the principal and interest on any outstanding Bonds payable from Airport System Revenue coming due and payable during the then-current Fiscal Year.
4. To make any deposits required to maintain the Reserve Account of the Debt Service Fund at the level required.
5. To pay the principal and interest coming due and payable during the Fiscal Year on any outstanding loans or obligations of Authority payable through the Subordinated Debt Account from Airport System Revenue.
6. To make any deposits required to maintain the Renewal and Replacement Account at the level required.

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7. To transfer to the Improvements Account an amount equal to Nine Hundred Thirty Six Thousand Dollars (\$936,000) as adjusted each year in proportion to the changes in the Gross Domestic Product (GDP) Implicit Price Deflator Index published by the U.S. Department of Commerce, Bureau of Data Analysis (the "Index"), using as a base the latest published index available as of March 1998. The ending Fiscal Year balance in the Improvements Account shall not exceed Five Million Dollars (as adjusted each year in proportion to the changes in the Index, using as a base the latest published Index available as of March 1998), net of gross project costs for Capital Improvements in the succeeding Fiscal Year Annual Budget and of prefunded grant monies on multi-year projects. In making this calculation, Authority funds deposited prior to October 1, 1999 are not to be considered.
  - a. For the three month period effective October 1, 2001 only, the contribution to the Improvements Account shall be reduced in an amount equal to any Landing Fees waived according to Section 5.05, subsection D.
8. To transfer to the Prepaid Airline Revenue Account an amount equal to the Coverage associated with Annual Bond Debt Service for that Fiscal Year.

C. As of October 1, 1999, and for each Fiscal Year thereafter, Authority will transfer to the Prepaid Airline Revenue Sub-Account of the General Purposes Account an amount equal to Coverage associated with Annual Bond Debt Service for the new Fiscal Year, using moneys available in the Prepaid Airline Revenue Sub-Account as of September 30, 1999, investment income thereon generated thereafter, and, if necessary, additional moneys from the Revenue Account. The initial transfer to the Prepaid Airline Revenue Sub-Account on October 1, 1999 will be made entirely from Authority resources; no charges will be made to the airline rate base in funding the initial Coverage amount. Interest income on moneys held in the Prepaid Airline Revenue Sub-Account shall be excluded from Airport System Revenues and retained in that sub-account.

**Article 8**

**CAPITAL IMPROVEMENTS**

**Section 8.01. Authority Report**

A. On or before August 1 each Fiscal Year, Authority shall report to the Signatory Airlines the purchase price/ construction cost of Capital Improvements and the amortization/ debt service schedule to be added to the Signatory Airline Rentals and Fees, pursuant to Article 6.

B. The report shall include, for each Capital Improvement, the following:

1. A description of the proposed Capital Improvement, together with cost estimates and any available preliminary drawings.
2. A statement of the need for and benefits to be derived from the Capital Improvement.
3. The allocation of the cost thereof within the Airport System Cost Centers.
4. Authority's proposed means of financing the Capital Improvement.

**Section 8.02. Airline Approvals**

A. If (1) a Capital Improvement is to be funded with proceeds from the sale of Bonds, loans, or other forms of borrowing, and (2) the amortization or debt service on that Capital Improvement is to be added to the Signatory Airline rentals and fees pursuant to Article 6, then the Capital Improvement must be submitted to the Signatory Airlines for concurrence in accordance with Section 8.02 (B & C). However, Authority may proceed with preliminary planning and engineering for projects without Signatory Airline concurrence in the Capital Improvement and include the cost in the calculation of rentals and fees.

B. Within a reasonable time, but no sooner than thirty days after distribution of the report, Authority shall consult with the Signatory Airlines to discuss the proposed Capital Improvements and obtain concurrence in those Capital Improvements requiring such concurrence and in the means of financing their cost. A Capital Improvement shall be deemed concurred in unless, within thirty days after the consultation, concurrence is specifically withheld, in writing, by at least fifty percent of all of the Signatory Airlines paying more than fifty percent of the Terminal Building Rentals, Landing Fees, and Preferential Apron Area Fees, taken as a whole.

C. If concurrence in a Capital Improvement requiring concurrence is specifically withheld following the first consultation, Authority shall have the option to consult with the Signatory Airlines a second time. Upon notice by Authority, the second consultation shall occur within thirty days after the receipt of notice of nonconcurrence from the Signatory Airlines. In the course of the second consultation, Authority shall respond to questions raised during the first consultation and shall ask for reconsideration of the Capital Improvement. Upon reconsideration, the proposed Capital Improvement shall be deemed concurred in unless, within thirty days after such second consultation, concurrence is specifically withheld,

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in writing, by at least fifty percent of all of the Signatory Airlines, paying more than fifty percent of the Terminal Building Rentals, Landing Fees, and Preferential Apron Area Fees, taken as a whole.

D. If the entire cost of a Capital Improvement can be funded from balances available in the Improvements Account, Signatory Airline concurrence in the Capital Improvement is not necessary.

### **Section 8.03. Approved Capital Improvements**

The following Capital Improvements are exempt from the review procedures of Section 8.02:

A. Items in the Airport System Capital Budget for Fiscal Years 2000 - 2004 (the CIP), as summarized in Exhibit F.

B. The Authority's approved FAR Part 150 Noise Abatement Program (the Part 150 Program) which is being substantially funded by grants-in-aid and PFC's.

The Authority does not anticipate having to issue any bonds to finance projects in the CIP or the Part 150 Program. The net cost of such Capital Improvements, if any, (after deducting PFC's, AIP grants and Improvement Account moneys applied toward those costs) shall be amortized and included in the recalculation of Terminal Building Rentals, Landing Fees, and Preferential Apron Area Fees when such Capital Improvements are available for use. Such amortization is to be computed using the Amortization Rate and the useful life of each capital item as determined by Authority in accordance with generally accepted accounting principles.

### **Section 8.04. Grants**

Authority will exercise its best efforts to obtain maximum Airport development grants-in-aid from federal, State, and local sources.

**Article 9**

**OBLIGATIONS OF AIRLINE**

**Section 9.01. Maintenance and Operations**

It is understood and agreed that Airline shall have the following maintenance and repair obligations.

**A. Maintenance of Terminal Building Premises**

1. Airline shall, at all times, repair and maintain its Exclusive Use Space in the Terminal Building so that it remains in a neat, clean, safe, and orderly condition. Airline will provide custodial maintenance in its Exclusive Use Space. However, Authority may at its sole discretion provide some maintenance as part of a Terminal Building general maintenance program.
2. Airline shall make no changes of any nature or character in, or additions to, Terminal Building Premises without the prior written approval of Authority. Airline shall submit to Authority for approval its plans and specifications for any proposed project and shall comply with any reasonable conditions required by Authority. If Airline makes such approved improvements or alterations to the Terminal Building Premises, the use thereof shall be enjoyed by Airline during the term hereof without additional rental therefor, except for any increase in Operation and Maintenance Expenses resulting from such improvement or alteration, but such additions, alterations or improvements shall become the property of Authority on the completion of the construction or termination of this Agreement, subject to the conditions set forth in Section 9.02.
3. Subject to Article 12, herein, Airline shall repair at its cost, or at Authority's option reimburse Authority for the cost of repairing, replacing, or rebuilding any damages to the Terminal Building Premises or other portions of the Terminal Building caused by the acts or omissions of Airline, its officers, employees, or agents. Any repairs made by Airline shall be subject to inspection and approval by Authority.
4. Subject to Article 12, herein, Airline shall repair at its cost, or at Airline's option reimburse Authority for the cost of repairing, replacing, or rebuilding any damage to tenant improvements or Personal Property on Airline's Exclusive Use Space where the damages were not caused by acts or omissions of Authority or its officers, or employees, or agents. Any repairs made by Airline to any tenant improvements shall be subject to inspection and approval by Authority.
5. Airline shall not erect, maintain, or display on the Terminal Building Premises any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Authority.



**B. Maintenance of Apron Area**

1. Airline shall remove to the extent reasonably practicable all of the accumulated oil and grease caused by Airline's aircraft and ground equipment while operating on the Preferential Apron Area.
2. Airline shall maintain in a neat, clean, and orderly manner the portions of the Apron Area occupied by Airline's apron service equipment. The piling of boxes, cartons, barrels, pallets, debris, or similar items on or about the leased premises in areas other than those designated by the Authority shall not be permitted.
3. Airline shall maintain its leased premises in a safe, neat, and attractive condition at all times, and shall pick up and place all trash and debris in sealed bags and shall move such debris to an enclosed trash facility until it is disposed of in a manner acceptable to Authority.

**Section 9.02. Ownership of Improvements**

Upon completion or installation of any fixture, addition, or improvement on the Terminal Building Premises, excluding Personal Property, such fixture, addition, or improvement shall immediately become the property of Authority, as owner, subject only to the right of Airline to use same as set forth in this Agreement and shall remain the property of Authority thereafter with the sole right, title, and interest thereto.

**Section 9.03. Liens**

Airline shall cause to be removed promptly any and all liens of any nature arising out of or because of any construction performed by Airline or any of its contractors or subcontractors upon the Terminal Building Premises or arising out of or because of the performance of any work or labor by or for it or them at said premises, reserving the right to contest in court the validity of any such liens. Airline shall have the right to post an appropriate bond to cover its obligations pursuant to this Section 9.03.

If any person or corporation attempts to assert a Mechanic's Lien against the Terminal Building Premises for improvements made by Airline, Airline shall hold Authority harmless from such claim, including the cost of defense.

**Section 9.04. Payment of Taxes**

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Airline shall pay (but such payment shall not be considered part of Airport System Revenue), all lawful taxes, assessments, or charges (including sales taxes imposed on rentals and fees paid by Airline) imposed by entities other than Authority that, during the term of this Agreement, may become a lien or be levied on any interest in Airline's Terminal Building Premises or any possessory right that Airline might have in or to said premises or any improvements thereof, by reason of its use or occupation thereof or otherwise, reserving to Airline, however, the right to contest, by administrative proceeding, court or otherwise, the validity or applicability of any such tax, assessment, or charge, as more specifically set forth in Section 9.10(E).

### **Section 9.05. Payment of Utility Charges**

Airline shall pay promptly for all utilities and utility services used by Airline at or in Airline's Terminal Building Premises.

### **Section 9.06. Vending Machines**

Airline shall not install or maintain vending machines, public pay telephones, or other machines operated by coins, tokens, or credit cards in or at Airline's Terminal Building Premises in areas accessible to the public except with the prior written approval of Authority. This Section 9.06 shall not prohibit Airline from the installation of self-ticketing machines, but the location and manner of such installation shall be subject to the prior written approval of Authority.

### **Section 9.07. Employees of Airline**

Airline shall require all of its employees and subcontractors or independent contractors hired by Airline working in view of the public and about the Terminal Building to wear clean and neat attire and to display appropriate identification.

### **Section 9.08. Affirmative Action**

Airline assures Authority that it will undertake an Affirmative Action Program to the extent required by Title 14, Code of Federal Regulations, Federal Aviation Administration, Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities as listed in 14 CFR, Part 152, Subpart E. Airline shall assure that no person will be excluded on such grounds from participating in, or receiving the services or benefits of any program or activity covered by such Subpart E.

Airline further assures that it will require that its covered organizations provide assurance to Airline that they will similarly undertake required Affirmative Action Programs, and that they will require assurance from their suborganizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

If Airline breaches any of the foregoing covenants, Authority shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued, subject to Section 13.02 hereof.

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### **Section 9.09. Nondiscrimination**

Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, creed, color, national origin, sex, or physical handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities; (2) no person on the grounds of race, creed, color, national origin, sex, or physical handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over, or under such Airport land and the furnishing of services thereon; (3) that Airline shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

If Airline breaches any of the above nondiscrimination covenants, Authority shall have the right to terminate this Agreement, and to re-enter and repossess said land and facilities thereon, and hold the same as if said Agreement had never been made or issued, subject to Section 13.02 hereof.

### **Section 9.10. Rules and Regulations**

A. Airline shall not use or permit to be used any Airport System facilities for any purpose or use other than those specifically authorized by this Agreement, and such other purposes or uses as may be mutually agreed upon in writing.

B. Airline shall comply with and shall require its officers and employees and any other persons over whom it has control to comply with such Rules and Regulations governing the use of Airport System facilities pursuant to this Agreement as may from time to time be adopted and promulgated by Authority including, but not limited to, health, safety, environmental concern, sanitation, and good order, and with such amendments, revisions, or extensions thereof as may from time to time be adopted and promulgated by Authority. Authority will provide a copy of the initial Rules and Regulations to Airline within thirty days of the date of this Agreement.

C. Airline's right of access to the Airport shall be subject to all federal, State, and local laws or regulations and all Airport rules, regulations, and ordinances now in effect, or hereinafter adopted or promulgated.

D. Airline shall, at all times, comply with any and all present and future laws, ordinances, and general rules or regulations of any public or governmental authority pertaining to its operations at the Airport now or at any time during the term that this Agreement is in force.

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E. Nothing herein contained shall be construed to prevent Airline from contesting the validity or applicability of any federal, State, or local law, regulation, or ordinance now in effect or hereinafter adopted or promulgated. Airline shall not be deemed to be in default of any requirement of this Agreement so long as such contest is diligently prosecuted in an appropriate forum by Airline or any other party to a similar agreement having interests consistent with those of Airline, or until thirty days following the entry of a final judgment contrary to Airline's position. However, should Airline contest the validity or applicability of any tax or fee, the payment of which might constitute a lien on the Airport System facilities, Authority may require the posting of a bond or placing in escrow of the amount of such tax or fee pending the outcome of such contest in order to avoid the imposition of such lien.

### **Section 9.11. Removal of Disabled Aircraft**

Upon release of Airline's disabled aircraft by applicable federal or State authority, Airline shall promptly remove any such disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and gate positions) and place any such disabled aircraft in such storage areas as may be designated by Authority. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by Authority. If Airline fails to remove any of its disabled aircraft promptly in accordance with this Section 9.11, Authority may, but shall not be obligated to, cause the removal of such disabled aircraft. However, the obligation of Authority to remove or store such disabled aircraft shall not be inconsistent with federal laws and regulations. Airline agrees to reimburse Authority for all costs of such removal.

**Article 10**

**OBLIGATIONS OF AUTHORITY**

**Section 10.01. Operation as a Public Airport**

Authority covenants and agrees that at all times it will operate and maintain the Airport facilities, as defined hereinabove, as a public airport consistent with and pursuant to the Sponsor's Assurances given by Authority to the U.S. Government under the Federal Airport Act and consistent with the terms and conditions of this Agreement. The Authority further covenants and agrees to manage the Airport in a reasonable and prudent manner and to use due diligence in the operation and maintenance of Airport facilities.

**Section 10.02. Access to Terminal Building Premises**

A. Upon payment of the rentals hereunder and performance of the covenants of this Agreement by Airline, Airline and its officers, employees, passengers, prospective passengers, and other persons with it shall have (without additional charge) the free, unobstructed right of ingress to and egress from Terminal Building Premises by means of a lobby, passageway, or other Public Areas designated by Authority for that purpose and connecting the Terminal Building Premises with a vehicular roadway and walkways adjacent to the Terminal Building (and provided and maintained by Authority and connecting with a public street or other public highway outside the Airport), and with the Apron Area adjacent to the Terminal Building, all of which are more specifically defined in Exhibit C.

B. The use of the means of access specified by Authority shall be in common with such other persons as Authority may authorize or permit, and shall be subject to and in accordance with all applicable local laws and ordinances and such weight restrictions, use restrictions, rules, regulations, and ordinances as may be adopted by Authority for the regulation and control of the users thereof.

C. The access provided for in Section 10.02(A) shall not be used, enjoyed, or extended to any person or company engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform or receive under the provisions of this Agreement and applicable laws.

**Section 10.03. Use of Other Public Areas**

The officers, employees, passengers, and prospective passengers of Airline and other persons doing business with Airline shall have the right to use any space, facilities, and conveniences provided by Authority at the Airport for use by airline passengers and other persons (including waiting rooms, lobbies, hallways, corridors, restaurants, observation galleries, toilets, streets, highways, and vehicular parking areas), in each case, however, only in common with others authorized by Authority to do so, at the times, to the extent, in the manner, and for the purposes for which they are made available for such use, in compliance with the terms and conditions on which they are made available for such use, and only in conformity with the Rules and Regulations with respect to the use thereof.

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**Section 10.04. Maintenance of Airport System**

Authority shall provide all maintenance, repairs and custodial services in the Terminal Building, Terminal Area, Apron Area and Airfield Area, except in Airline's Exclusive Use Areas, and shall bear the cost of maintenance in consideration for the rental to be paid pursuant to the provisions of Section 5.01 and shall have no further responsibility.

**Article 11**

**AUTHORITY'S RESERVATIONS**

**Section 11.01. Improvement, Relocation, or Removal of Structures**

Authority reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, including the right to improve, relocate, or remove any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions; provided however that Authority shall not have the right to relocate or remove non-terminal building structures leased by Authority to Airline, unless Authority first obtains Airline's consent or unless Authority exercises its power of eminent domain.

**Section 11.02. Right to Enter and Make Repairs**

Authority and its authorized officers, employees, agents, contractors, subcontractors, and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable) to enter Airline's leased premises for the following purposes:

A. To inspect such premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Airline has complied and is complying with the terms and conditions of this Agreement with respect to such premises.

B. To perform maintenance and make repairs and replacements in any case where Airline is obligated to do so and has failed after reasonable notice to do so, in which event Airline shall reimburse Authority for the cost thereof promptly on demand.

C. To perform maintenance and make repairs and replacements in any case where Authority is obligated to do so, and in any other case where Authority, in its reasonable judgment, determines that it is necessary or desirable to do so in order to preserve the structural safety of such premises or of the building in which they are located or to correct any condition likely to cause injuries or damages to persons or property.

D. In the exercise of Authority's police power.

No such entry by or on behalf of Authority on any premises leased to Airline shall cause or constitute a termination of the letting thereof or be deemed to constitute an interference with the possession thereof by Airline; and no such entry on any premises for the exclusive or preferential use of which Airline has been granted a license shall constitute a revocation of such license or be deemed to constitute an interference with Airline's ability to operate from its leased premises. If Authority, acting pursuant to Subsection 11.02(C), creates a condition that causes the premises to be untenable in whole, or in substantial part, then Authority, if requested by Airline, will make alternative premises available to Airline and compensate Airline for all relocation costs and expenses incurred by reason of such relocation or abate rent during the period of such repairs.

**Section 11.03. Airport Access License/Permit**

Authority reserves the right to establish a licensing or permit procedure for personnel and vehicles requiring access to the Airport operational areas and to levy a reasonable regulatory or administrative charge for issuance of such Airport access license or permit. Airline shall pay such charge with regard to its own personnel or vehicles and shall, at the request of Authority, cooperate in the collection of such charge with regard to any personnel or vehicles used by its suppliers. Any such charge shall not exceed an amount necessary to cover the actual regulatory or administrative expenses of such control measures.

**Section 11.04. Subordination to Agreements with the U.S. Government**

This Agreement is subordinate to the provisions of any existing or future agreement(s) between Authority and the United States relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to Authority of federal funds for the development of the Airport.

**Section 11.05. War or National Emergency**

During a time of war or national emergency, Authority shall have the right to lease the Airport or any part thereof to the U.S. Government for military use. If any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the lease to the U.S. Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

**Section 11.06. Airline Employee Parking**

Authority may designate areas from time to time to be used for parking automobiles by Airline's employees working at the Airport. Authority shall have the right to charge a reasonable fee (not to exceed the actual cost of providing such parking space) for such privilege.



**Article 12**

**DAMAGE OR DESTRUCTION, INSURANCE, AND INDEMNIFICATION**

**Section 12.01. Destruction of Terminal Building**

If, by reason of any cause, the Terminal Building is damaged to such an extent that the Terminal Building Premises are untenable in whole, or in substantial part, then:

A. If the repairs and rebuilding necessary to restore the Terminal Building to its condition before the occurrence of the damage can, in the reasonable judgment of Authority, be completed within two hundred seventy (270) days from the date on which the damage occurred, Authority shall so notify Airline, in writing, and shall proceed promptly with such repairs and rebuilding. In such event, the rental for the Terminal Building Premises for which provision is made in Article 5 shall be abated pro rata for the period from the date of the occurrence of such damage to the date on which such repairs and rebuilding are completed.

B. If such repairs and rebuilding cannot, in the reasonable judgment of Authority, be completed within said two hundred (270) days, Authority, at its option, to be evidenced by notice in writing to Airline, may either: (1) proceed promptly with said repairs and rebuilding, in which event said rental shall be abated as aforesaid, or (2) terminate the letting of the Terminal Building Premises, in which event said rental therefor for which provision is made in Article 5 shall be abated from and after the date of occurrence of the damage.

C. Authority shall use its best efforts to provide Airline with alternate space, if necessary, during any repairs, rebuilding, or reconstruction of the Terminal Building. Authority shall advise Airline, as soon as practicable, of Authority's intention regarding any necessary repairs or restorations.

D. In the event, however, that the cause of the damage is the result of the negligence or wrongful act of Airline or its employees or agents, then the expense of all such repairs shall be borne by Airline and there shall be no abatement of rent or other charges payable hereunder

**Section 12.02. Insurance**

Airline shall carry commercial general/airport and aircraft liability insurance with responsible insurance underwriters reasonably acceptable to Authority, insuring Airline (and to the extent Airline is required to indemnify Authority hereunder, the Authority, its directors, officers and employees) against all liability for personal or bodily injuries (including wrongful death) and damages to, destruction of, or loss of use of property caused by Airline's use and occupancy of Airport System facilities or otherwise caused by Airline's activities and operations on said facilities. The policy limits thereof shall be single limits of One Hundred Fifty Million Dollars (\$150,000,000), per occurrence, for bodily injury, including passenger liability and property damage, and twenty five million dollars (\$25,000,000) per offense and aggregate for Personal and advertising injury, or such greater amount that is consistent with industry practice.

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Should Airline or its agents operate vehicles on or about the Airport System premises Airline shall maintain automobile liability insurance insuring Airline (and to the extent Airline is required to indemnify Authority hereunder, the Authority, its directors, officers and employees) against all liability for bodily injuries (including wrongful death) and damages to, destruction of, or loss of use of property caused by Airline's use of vehicles on Airport System facilities, or otherwise caused by Airline's activities and operations. The policy limits thereof shall be a single limit of One Hundred Fifty Million Dollars (\$150,000,000) per occurrence , for bodily injury and property damage or such greater amount that is consistent with industry practice.

With respect to aircraft liability, the limit applies separately for each aircraft. Airline shall furnish Authority with certificates issued by the insurance underwriters or brokers evidencing the existence of valid policies of insurance as aforesaid. Such certificates shall state that the coverage will not be amended so as to decrease the protection below the limits specified therein or be subject to cancellation without thirty days written notice to Authority.

If, at any time, Airline shall fail to obtain or maintain in force the insurance required herein, Authority may notify Airline of its intention to purchase such insurance for Airline's account. If Airline has not delivered evidence of insurance to Authority before the date on which the current insurance expires, Authority may effect such insurance by taking out policies in companies satisfactory to Authority, such insurance to be in amounts no greater than those stipulated herein or as may be in effect from time to time. The amount of the premiums paid for such insurance by Authority shall be payable by Airline on receipt of Authority's billing therefor, with interest at the rate of eighteen percent per year commencing at the date of payment by Authority.

### **Section 12.03 Indemnification**

Airline agrees fully to indemnify, defend, save, and hold harmless Authority and its directors, officers and employees from and against all claims and actions (and all expenses incidental to the investigation and defense thereof, including reasonable attorney fees) based on or arising out of personal or bodily injuries or death to any person or damage to, destruction of or loss of use of any property caused by, or arising out of the use, occupancy, or operations of Airline at the Airport or Airport System; provided that Airline shall not be liable for any injuries, death, damage, or loss to the extent that such injury, death, damage, or loss is caused by the fault or negligence of Authority, its agents, or employees; and provided further that Authority shall give Airline prompt and reasonable notice of any such claims or actions.

Airline also agrees to hold Authority harmless from any claims for damage of any type, including consequential loss of use thereof, to any aviation or ground equipment, materials, supplies, machinery, tools or related items belonging to Airline, its subcontractors or suppliers, whether or not Authority is deemed responsible or negligent for such damage, provided that Airline shall not hold Authority harmless from any such claims arising from Authority's gross negligence or willful misconduct.

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In the event of any claim, action or suit being made against Authority that is covered by Airline's indemnification obligations hereunder, Airline shall, upon receipt of particulars from Authority, immediately assume and undertake all investigation, defense and settlement of such claim, action or suit at its own cost and expense. Authority shall, at Airline's cost and expense, provide all reasonable cooperation appropriate to permit Airline to investigate, defend and settle the claim, suit or action. Should, however, Authority decide to engage its own counsel on its behalf, the expense of such counsel shall be solely that of Authority.

### **Section 12.04. Non-liability of Agents and Employees**

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

**Article 13**

**TERMINATION**

**Section 13.01. Termination of Agreement by Airline**

A. Airline, at its option, may declare this Agreement terminated in its entirety at any time Airline is not in default in the payment of Rentals or Fees to Authority by giving Authority sixty days advance written notice to be served as hereinafter provided and by surrender of the leased premises on the happening of any one or more of the following events:

1. If the Terminal Building Premises become untenable in whole, or in substantial part, and Authority does not terminate the letting thereof, pursuant to an option reserved to it in this Agreement, and does not proceed as promptly as reasonably practicable with the repairs and rebuilding necessary to restore the Terminal Building Premises to its condition before the occurrence of the damage.

2. If Authority fails to provide and maintain means for unobstructed ingress and egress to and from the Terminal Building Premises in accordance with the provisions of this Agreement.

3. If Authority closes the Airport to aircraft operations in general, or to the flights of Airline for reasons other than weather, acts of God, or other reasons beyond Authority's control, and fails to reopen the Airport to such operations or flights for a period in excess of thirty days.

4. If Authority fails to comply with any of the terms or provisions of this Agreement or fails to promptly fulfill any of its obligations under this Agreement.

B. No termination declared by Airline shall be effective unless and until not less than sixty days have elapsed after the aforementioned written notice to Authority specifying the date on which such termination shall take effect and the cause for which it is being terminated. Authority may cure the cause of such termination within said sixty-day period or such longer time as the parties may agree.

**Section 13.02 Termination of Agreement by Authority**

A. Authority, at its option, may declare this Agreement terminated on the happening of any one or more of the following events, and may exercise all rights of entry and re-entry on the Terminal Building Premises:

1. If the rentals and fees, or other money payments that Airline herein agrees to pay, or any part hereof, shall be unpaid on the date the same shall become due.
2. If Airline files a voluntary petition in bankruptcy, or makes a general assignment for the benefit of creditors, or if Airline is adjudicated as bankrupt.
3. The taking of jurisdiction of Airline or its assets by a court of competent jurisdiction pursuant to proceedings brought under the provisions of any federal reorganization act.

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4. The appointment of a receiver or a trustee of Airline's assets by a court of competent jurisdiction or a voluntary agreement with Airline's creditors and the same is not removed in ninety days.
5. If any act occurs that deprives Airline permanently of the rights, powers, and privileges necessary for the proper conduct and operation of its Air Transportation business.
6. If Airline abandons and fails to use the Terminal Building Premises for a period of thirty days at any one time, except when such abandonment and cessation are due to fire, earthquake, strike, governmental action, default of Authority, or other cause beyond Airline's control.
7. If Airline uses or permits the use of its leased space in the Terminal Building Premises at any time for any purpose for which the use thereof at that time is not authorized by this Agreement, or by a subsequent written agreement between the parties, or permits the use thereof in violation of any law, rule, or regulation to which Airline has agreed in this Agreement to conform.
8. If Airline discontinues Air Transportation to the Airport as a consequence of Airline's filing a bankruptcy petition, voluntary or involuntary, seeking a reorganization or readjustment of its indebtedness under the federal bankruptcy laws or under any other statute of the United States or any state thereof, or being adjudged bankrupt, Airline shall be deemed to have forfeited its leasehold space.
9. If Airline fails to operate at least five weekly scheduled passenger service departures from the Airport, for a period of ninety days or more (except by reason of strikes or causes beyond the control of Airline).
10. If Airline is in violation of any material provision of this Agreement not cured within a thirty-day period as specified in the following paragraph.

B. No termination declared by Authority shall be effective unless and until at least thirty days have elapsed after written notice to Airline specifying the date upon which such termination shall take effect and the cause for which it is being terminated. Airline may cure the cause of such termination within said thirty-day period or such longer time as the parties may agree thereto. Such written notice may, at the option of Authority, be served prior to the expiration of the ninety day period specified in Paragraphs 13.01(A)(4) and 13.01(A)(9), provided that Airline shall be allowed the entire 90 days to cure the cause of termination.

### **Section 13.03. Possession by Authority**

In any of the aforesaid events in this Article 13, Authority may take possession of Airline's leased premises upon termination of this Agreement and remove Airline's effects without being deemed guilty of trespassing. Upon any said termination of this agreement, all rights of Airline shall be forfeited; provided Authority shall have and reserve all of its available remedies at law as a result of said breach of this Agreement.

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Failure of Authority to declare this Agreement terminated on default of Airline for any of the reasons set forth herein shall not operate to bar, destroy, or waive the right of Authority to cancel this Agreement by reason of any subsequent violation of the terms hereof.

**Article 14**

**RIGHTS ON TERMINATION OR REASSIGNMENT OF LEASED PREMISES**

**Section 14.01. Fixed Improvements**

It is the intent of this Agreement that any leasehold improvements and any alterations thereto shall be and remain the property of Authority during the entire term of this Agreement and thereafter.

**Section 14.02. Personal Property**

On termination of this Agreement, Airline shall remove all Personal Property from its leased premises within thirty days after said termination and restore the leased premises to their original condition, reasonable wear and tear excepted. If Airline fails to remove said Personal Property, Authority may thereafter remove said property at Airline's expense.

**Article 15**

**ASSIGNMENT OR SUBLEASE**

**Section 15.01. Assignment or Sublease**

Airline shall not assign or transfer this Agreement or any right or leasehold interest granted to it by this Agreement, or sublet or otherwise transfer any interest in or to the Terminal Building Premises, in whole or in part, except with the prior written consent of Authority, which shall not be unreasonably withheld. Authority expressly reserves the right to withhold approval of a proposed assignment or sublease of any ticket counter space, office area space, baggage makeup space, airline operations space, or holdroom space with associated aircraft parking position(s) if any other such space is vacant and available for lease and/or use on a per-use basis.

In the event of a sublease where the rentals and fees for the subleased premises exceed the rentals and fees payable by Airline for said premises pursuant to this Agreement, Airline shall pay to Authority the excess of the rentals and fees received from the sub-lessee over the rentals and fees specified to be paid by Airline to Authority herein, provided that Airline may charge a reasonable fee for administrative costs (not to exceed fifteen percent) of rentals and fees. Airline shall also have the right to charge a reasonable fee to others for the use of Airline's capital equipment and to charge for the maintenance and operating expenses and amortization of tenant improvements plus a reasonable fee for administrative costs, not to exceed fifteen percent, none of which shall be considered excess rentals and fees. All amounts received by Authority from any source in any way related to excess rentals and fees shall be deemed Airport System Revenue for purposes of this Agreement.

**Section 15.02. Successors and Assigns Bound**

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



**Article 16**

**ENVIRONMENTAL REGULATIONS**

**Section 16.01 Environmental Representations**

Notwithstanding any other provisions of this Agreement, and in addition to any and all other Agreement requirements, and any other covenants and warranties of Airline, Airline hereby expressly warrants, guarantees, and represents to the Authority, upon which the Authority expressly relies that:

A. Airline is knowledgeable of any and all federal, state, regional and local governmental laws, ordinances, regulations, orders and rules, without limitation which govern or which in any way apply to the direct or indirect results and impacts to the environmental and natural resources due to, or in any way resulting from, the conduct by Airline of its operations pursuant to or upon the Premises. Airline agrees to keep informed of future changes in environmental laws, regulations and ordinances;

B. Airline agrees to comply with all applicable federal, state, regional and local laws, regulations and ordinances protecting the environmental and natural resources and all rules and regulations promulgated or adapted as some may from time to time be amended and accepts full responsibility and liability for such compliance;

C. Airline shall, prior to commencement of any such operations pursuant to this Agreement, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter hereof;

D. Airline, its employees, agents, contractors, and all persons working for, or on behalf of Airline, have been fully and properly trained in the handling and storage of all such hazardous waste materials and other pollutants and contaminants; and such training complies with any and all applicable federal, state and local laws, ordinances, regulations, rulings, orders and standards which are now or are hereinafter promulgated;

E. Airline agrees that it will neither handle nor store any toxic waste materials on the Premises except as required in connection with its Air Transportation business and in accordance with applicable environmental laws, regulations and ordinances.

F. Airline shall provide the Authority satisfactory documentary evidence of all such requisite legal permits and notifications as hereinabove required.

G. Airline agrees to cooperate with any investigation, audit or inquiry by the Authority or any governmental agency regarding possible violation of any environmental law or regulation.

**Section 16.02 Generator of Hazardous Waste**

If Airline is deemed to be a generator of hazardous waste, as defined by state, federal, or local law, Airline shall, if required, obtain an EPA identification number and the appropriate generator permit and

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shall comply with all federal, state, regional and local requirements imposed upon a generator of hazardous waste including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with the law.

### **Section 16.03 Inventory List**

Provisions shall be made by Airline accurately identify all such hazardous, toxic and other contaminated or polluted materials, whether stored, disposed of or recycled, and make materials and/or locations available at all times for inspection at any time on the Premises by the Authority officials and also by Fire Department officials or regulatory personnel having jurisdiction over the Premises, for implementation of proper storage, handling and disposal procedures.

### **Section 16.04 Notification and Copies**

Notification of all hazardous waste activities by Airline shall be provided on a timely basis to the Authority or such other agencies as the Authority may from time to time designate. Airline agrees that upon requests of the Authority a twenty-four (24)-hour emergency coordinator and phone number shall be furnished to the Authority and to such state and county officials as are designated by the Authority, in case of any spill, leak or other emergency situation involving hazardous, toxic, flammable or other pollutants or contaminated materials. Designation of this emergency coordination may be required by existing federal, state, regional or local regulations which require such designation regardless of such request by the Authority.

Airline agrees to provide the Authority copies of all permit application materials, permits, monitoring reports, environmental response plan, and regulated materials storage and disposal plans, ten (10) days after their required submittal to regulation agencies having jurisdiction over such matters.

### **Section 16.05 Violation**

A. If Authority receives a notice from any governmental entity asserting a violation by Airline of Airline's covenants and agreements contained herein, or if Authority otherwise has reasonable grounds upon which to believe that such a violation has occurred, Authority shall have the right, but not the obligation, to contract, at Airline's sole cost and expense, for the services of persons ("Site Reviewers") to enter the Premises and perform environmental site assessments for the purpose of determining whether there exists any environmental condition that could result in any liability, cost or expense to Authority. The Site Reviewers shall perform such tests on the Premises as may be necessary, in the opinion of the Site Reviewers, to conduct a prudent environmental site assessment. Airline shall supply such information as is requested by the Site Reviewers, and be given the opportunity to conduct a site assessment should one be warranted. In the event Authority conducts testing due to information other than a notice of violation from a governmental authority, and the testing does not reveal any contamination, Authority agrees to bear all costs associated with the testing.

B. If Airline receives a Notice of Violation or similar enforcement action or notice of noncompliance, Airline shall provide a copy of same to the Authority within five (5) working days of

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receipt by the Airline or Airline's agent. Violation of any part of the provisions of this Article or disposition by Airline of any sanitary waste, pollutants, contaminants, hazardous waste, toxic waste, industrial cooling water, sewage or any other materials in violation of the provisions of this Article shall be deemed to be a default under this Agreement if not cured within thirty (30) days of receipt of notice from the Authority shall be grounds for termination of this Agreement, and shall also provide the Authority grounds for taking whatever other action it may have in addition to termination based upon default as provided for under this Agreement.

**Article 17**

**Federal Storm Water Regulations**

**Section 17.01 Acknowledgements**

Notwithstanding any other provisions or terms of the Agreement, Airline acknowledges that certain properties and uses of properties within the Airport or on Authority owned land are subject to Federal storm water regulations as set forth in 40 CFR Part 122. Airline agrees to observe and abide by said regulations as applicable to its property and use.

Notwithstanding any other provisions or terms of the Agreement, the Authority acknowledges that Airline has taken steps necessary to apply for or obtain a storm water discharge permit as required by the applicable regulations for Airline's operations at the Airport.

Notwithstanding any other provisions or terms of this Agreement, including Airline's right to quiet enjoyment, the Authority and Airline both acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Airline acknowledges that it may be necessary to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled or otherwise used by the Airline, as defined in the federal storm water regulations, by implementing and maintaining "best management practices."

**Section 17.02 Notifications**

The Authority will provide Airline with written notice of those storm water discharge permit requirements, that are in the Authority's storm water permit, that Airline will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges; implementation of storm water pollution prevention or similar plans; implementation of "best management practices"; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline within thirty (30) days of receipt of such written notice, shall notify the Authority in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Airline does not provide such timely notice, it is deemed to assent to undertake such requirements. If Airline provides the Authority with timely written notice that it disputes such storm water discharge permit requirements, the Authority and Airline agree to negotiate a prompt resolution of their differences. Airline warrants that it will not object to written notice from the Authority for purposes of delay or avoiding compliance.

Airline agrees to undertake those storm water discharge permit requirements for which it has received written notice from any governmental entity charged with enforcement of storm water regulations. Airline acknowledges that time is of the essence and will make every effort to meet any and all deadlines that may be imposed on it.

The Authority agrees to provide Airline, at its request, with any non-privileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations.

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The Authority will give Airline written notice of any breach by Airline of the Authority's storm water discharge permit or the provisions of this section. If such a breach is material, and, if of a continuing nature, the Authority may terminate this Agreement. Airline agrees to cure promptly any breach caused by Airline or as a direct result of Airline's operation.

### **Section 17.03 Airline Participation**

Airline agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport. In addition, Airline agrees to participate in the Authority's Environmental Compliance Program and is subject to and agrees to periodic inspections conducted by Airport staff to monitor the management, handling, storage, and disposal practices associated with any petroleum substances, hazardous substances, or waste materials.

### **Section 17.04 Remedies and Responsibilities**

All such remedies of the Authority with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement.

Airline shall be liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage or disposal of all pollutants or contaminated materials, as same are defined by law, in connection with Airline's operations at the Airport by Airline or by Airline's employees, invitees, suppliers or service or providers of materials, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Airline pursuant to the terms of this Agreement.

**Article 18**

**MISCELLANEOUS**

**Section 18.01. Noninterference with Airport Operations**

Airline, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not make use of the leased premises in any manner that might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, on reasonable notice to Airline and opportunity to cure, Authority reserves the right to enter on the premises hereby leased and cause the abatement of such interference at the expense of Airline.

Authority shall maintain and keep in repair the Airport landing areas, including taxiways, and shall have the right to direct and control all activities of Airline in this regard.

**Section 18.02. Headings of Articles and Sections**

The headings of the various articles and sections of this Agreement are merely for convenience of reference and do not limit the content of the articles and sections.

**Section 18.03. Severability**

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

**Section 18.04. Governing Law**

This Agreement and all disputes arising hereunder shall be governed by the laws of the State of Florida.

**Section 18.05. Quiet Enjoyment**

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

**Section 18.06. Incorporation of Exhibits**

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

**Section 18.07. Incorporation of Required Provisions**

The parties incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

**Section 18.08. Noise Abatement and Mitigation**

Authority has enacted certain regulations and may in the future enact other regulations, for the purpose of minimizing, abating and mitigating noise resulting from operation of the Airport. Authority contends it has the power, as Airport proprietor, to enact such regulations, including, but not limited to, imposition of noise-related fees and charges and restrictions upon the types of aircraft and numbers and times of aircraft operations at the Airport. Airline contends that such regulations may be invalid under the Constitution, laws, regulations, and grant agreements of the United States and/or the State of Florida. Authority and Airline agree that nothing in this Agreement shall be deemed to impair or in any way affect Authority's right as Airport proprietor, to the extent of such right, to enact such regulations for this purpose, as long as such regulations are otherwise valid under applicable law, or to affect or impair Airline's right to challenge any such regulation on any ground other than as a breach or impairment of this Agreement.

**Section 18.09. Entire Agreement**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. This Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

**Section 18.10. Nonwaiver of Rights**

No waiver by either party, at any time, of any of the terms, conditions, covenants, or agreements herein, or of any forfeiture, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of Authority to re-enter the Terminal Building Premises, and no subsequent acceptance by Authority to rentals then or thereafter accrued, and no delay, failure, or omission of either party to exercise any right, power, privilege, or option arising from any default, shall impair any such right, power, privilege, or options, or be construed to be a relinquishment thereof, or a waiver of such default or acquiescence therein, and no notice by either party shall be required to restore or revive any option, right, power, remedy, or privilege after waiver by such party of default in one or more instances. No option, right, power, remedy, or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. All rights provided by this Agreement shall be cumulative, and no one of them shall be exclusive of the other or exclusive of any other remedies provided by law, and the exercise of one right, power, option, or remedy by either party shall not impair its rights to exercise any other right, power, option, or remedy.

**Section 18.11. Force Majeure**

Neither Authority nor Airline shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder, during and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible, and which are not within its control. This provision shall not apply to failures by Airline to pay rentals, fees, or other charges, or to make any other money payments required by this Agreement. This Section 18.11 shall not prevent either party from exercising its rights of termination specified under Articles 13 and 14.

**Section 18.12. General Interpretation**

Insofar as this Agreement grants, permits, or contemplates the use of space or facilities or the doing of any other act of thing at the Airport by Airline, such use or the doing of such act or thing is to be in connection with the operation of the civil air transportation system by Airline for the carriage by aircraft of persons, property, cargo, and mail on scheduled or nonscheduled flights, whether as a common carrier, a contract carrier, a private carrier, or otherwise. Each of the parties, however, has entered into this Agreement solely for its own benefit; and (without limiting the right of either party to maintain suits, actions, or other proceedings because of breaches of this Agreement) the Agreement does not grant to any third person (excepting a successor party to Authority or Airline) a right to claim damages or bring any suit, action, or other proceeding against either Authority or Airline because of any breach hereof.

**Section 18.13. Agreements Between Authority and Other Airlines**

Authority agrees not to enter into any scheduled airline operating agreement and terminal building lease with any other airline conducting similar operations at the Airport after the date of this Agreement that contains more favorable rentals and fees than those provided in this Agreement.

**Section 18.14. Time is of the Essence**

Time is of the essence in this Agreement.

**Section 18.15. Notices, Consents, and Approvals**

All notices, consents, and approvals required or authorized by this Agreement to be given by or on behalf of either party to the other shall be in writing and signed by a duly designated representative of the party by or on whose behalf they are given. Whenever either party requires approvals, such approvals shall not be unreasonably withheld.



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

Notices to Authority shall be addressed to it and delivered to the office of its Executive Director or his designee, Sarasota Manatee Airport Authority, Sarasota Bradenton International Airport, 6000 Airport Circle, Sarasota, Florida 34243-2105, either by hand or by registered mail, postage prepaid, or to such other place as Authority may hereinafter designate by notice to Airline, in writing.

Notices to Airline shall be addressed to it and delivered to the office of \_\_\_\_\_ either by hand or by registered mail, postage prepaid, or to such other office as Airline may hereinafter designate by notice to Authority, in writing.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

**SARASOTA MANATEE AIRPORT AUTHORITY**

**SEAL**

By \_\_\_\_\_  
Chairman

Date

Attest: \_\_\_\_\_

\_\_\_\_\_  
**Airline**

By:

Name / Title

Date

Attest: \_\_\_\_\_

# **EXHIBITS**