

AIRLINE-AIRPORT LEASE AND USE AGREEMENT
BETWEEN
BROWARD COUNTY
AND

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AIRLINE-AIRPORT
LEASE AND USE AGREEMENT

THIS AIRLINE-AIRPORT LEASE AND USE AGREEMENT, hereinafter referred to as "Agreement" or "Signatory Agreement", is entered into between Broward County, a political subdivision of the State of Florida, hereinafter referred to as "County," and _____, a limited liability corporation organized and existing under the laws of the State of Nevada authorized to do business in the State of Florida, hereinafter referred to as "Airline";

WITNESSETH:

WHEREAS, County is the owner of the Fort Lauderdale-Hollywood International Airport, located in Broward County, state of Florida ("Airport"); and

WHEREAS, County has the right to lease and license the use of the property on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline, as duly authorized by governmental authority, is engaged in the business of air transportation with respect to persons, property and mail at the Airport and elsewhere; and

WHEREAS, Airline requires the use of certain specific premises, facilities, rights and privileges in connection with its use of the Airport; and

WHEREAS, County and Airline acknowledge that during the term of this Agreement County may adopt a new bond resolution (referred to herein as the "Subordinate Bond Resolution") pursuant to which County may issue airport revenue bonds to finance and refinance the planning, design, acquisition, construction, installation and equipping of one or more Airport-related projects, with such bonds being issued on a subordinate basis to the Revenue Bonds issued and outstanding under the "Bond Resolution," (as defined herein), and County and Airline desire to provide hereunder for such Subordinate Bond Resolution to the greatest extent possible; and

WHEREAS, the County and the Airline desire to enter into this Agreement in order to, among other things: (i) provide for the planning, design, construction, installation and equipping of the "Runway Program" (as defined herein) and (ii) allow for the financing of the Runway Program, in whole or in part, through the issuance by the County of "Non-AMT Bonds" (as defined herein); and

WHEREAS, the Airline acknowledges and agrees to execute a Signatory Terminal Building Lease Agreement ("TBLA") contemporaneously herewith;

NOW, THEREFORE, for and in consideration of the agreements set forth herein, County and Airline agree as follows:

ARTICLE I
DEFINITIONS

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

- 1.1 Affiliate shall mean, as the context allows, both a "Wholly Owned Affiliate" of Airline, and a "Non-Wholly Owned Affiliate" of Airline, so long as Airline remains a "Signatory Airline," as defined below. A "Wholly Owned Affiliate" is defined as a Scheduled Air Carrier that is (i) one hundred percent (100%) directly or indirectly owned by a Signatory Airline, or (ii) one hundred percent (100%) directly or indirectly owned by a parent company which also has a one hundred percent (100%) direct or indirect ownership in a Signatory Airline. A "Non-Wholly Owned Affiliate" is defined as any Scheduled Air Carrier that operates at the Airport under essentially the same trade name as a Signatory Airline and uses essentially the same livery as the Signatory Airline. The foregoing ownership interests and relationships must be established by the Airline to the reasonable satisfaction of the Aviation Department.
- a. So long as Airline is a Signatory Airline, a Wholly Owned Affiliate of Airline will be treated as a Signatory Airline for the purposes of calculating landing fees, as prescribed by **Exhibit B** of this Agreement; and
- b. So long as Airline is a Signatory Airline, both a Wholly Owned Affiliate of Airline and a Non-Wholly Owned Affiliate of Airline will be treated as a Signatory Airline for the purposes of calculating terminal rental rates as prescribed by **Exhibit B** of this Agreement.
- c. For the purposes of this Agreement and the TBLA, as defined below, Airline shall guarantee to the County, and be responsible for, all payments, rates and fees of its affiliates to County.
- 1.2 Airfield shall mean those portions of the Airport provided for landing, take-off and taxiing of aircraft, including without limitation approach and turning zones, avigation or other easements, runways, taxiways, runway and taxiway lights, and other appurtenances related to the aeronautical use of the Airport, including any property purchased for noise mitigation purposes as well as the fuel farm and hydrant system used for fuel at the Airport, as may be revised from time to time by County in its reasonable discretion.
- 1.3 Airline shall mean the air transportation company executing this Agreement.
- 1.4 Airline Fees and Charges Sub-Account shall mean the airline fees and charges sub-account established by Article IX of this Agreement within the General Purposes Account in the Aviation Fund, together with separate sub sub-accounts to be established therein for the Terminal and the Airfield.
- 1.5 Airline's Parties shall mean the officers, agents, employees, partners, contractors, subcontractors, sublessees, guests and invitees of Airline and its Affiliates.
- 1.6 Airline Premises Leased Premises or Premises shall mean the space leased by Airline from County as described in the TBLA.

- 1.7 Airport shall mean the Fort Lauderdale-Hollywood International Airport, which is owned and operated by County.
- 1.8 Airport Debt Service Requirement shall mean, for any Fiscal Year, (i) an amount equal to one hundred twenty-five percent (125%) of the amount required by the Bond Resolution and Subordinate Bond Resolution to be paid in such Fiscal Year into the Interest, Principal and Sinking Fund Accounts of the Bond Fund (or such other fund and account names as may be established in the Subordinate Bond Resolution for corresponding funds and accounts) in respect of Revenue Bonds issued and outstanding under the Bond Resolution and the Subordinate Bond Resolution; (ii) plus one hundred percent (100%) of any principal, interest, premium, and other fees and amounts either paid or accrued for, or required under applicable documents to be paid or accrued for Other Indebtedness in such Fiscal Year; and (iii) plus one hundred percent (100%) of any required deposits to the Reserve Account established under the Bond Resolution and any debt service reserve account established under the Subordinate Bond Resolution in such Fiscal Year: provided, however, that the percentage coverage requirement stated in clause (i) shall be adjusted as necessary to reflect the actual debt service coverage percentage requirement of the Subordinate Bond Resolution.
- 1.9 Airport Discretionary Sub-Account shall mean the airport discretionary sub-account established by Article IX of this Agreement within the General Purposes Account in the Aviation Fund, together with separate sub sub-accounts to be established therein for the Terminal and the Airfield.
- 1.10 Airport System shall mean the real property and airport and aviation facilities constituting the existing Fort Lauderdale-Hollywood International Airport and the North Perry Airport and any airports and aviation facilities added to the Airport System pursuant to this Agreement and the Bond Resolution.
- 1.11 Annual Budget shall mean the annual budget of the Airport System.
- 1.12 Applicable Laws shall mean all "**Environmental Laws,**" as defined below in Section 1.25, and all other laws, codes, advisory circulars, rules, regulations and ordinances of any governmental or quasi-governmental entity having jurisdiction over the Airport or activities on the Airport, including federal, state, County, local and any quasi-governmental agencies, laws, codes, advisory circulars, rules, regulations and ordinances.
- 1.13 Aviation Department shall mean the County's Aviation Department or such other named County organization that from time to time may exercise functions equivalent or similar to those now exercised by the Aviation Department.
- 1.14 Board of Commissioners shall mean the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.15 Bond Fund shall mean the fund established by the Bond Resolution and held by the Trustee to provide for the segregation of the accounts contained therein, and any corresponding fund (by whatever name given thereto) established for similar purposes pursuant to the Subordinate Bond Resolution.

- 1.16 Bond Resolution shall mean the Airport System Revenue Bond Resolution #2012-320 authorizing Broward County Airport System Revenue Bonds as the same has and may, from time to time, be amended and supplemented pursuant to the provisions of said Bond Resolution; provided that no such amendment or supplement be inconsistent with the rights or obligations of the parties under this Agreement or the TBLA.
- 1.17 Capital Expenditure shall mean an expenditure equal to or greater than \$150,000.00 made to acquire, purchase, install or construct a single capital item or project for the purposes of improving, maintaining or developing the Airport System.
- 1.18 Capital Improvement Plan shall mean certain capital improvements to be constructed, acquired, installed or equipped at the Airport, including, without limitation, the Runway Program, all as more specifically set forth in **Exhibit A**, attached hereto and by this reference made a part hereof.
- 1.19 Code shall mean the Internal Revenue Code of 1986, as from time to time amended, and any regulations promulgated there under, including, without limitation, any Treasury Regulations or temporary or proposed regulations, as the same shall from time to time be amended including (until modified, amended or superseded) Treasury Regulations or temporary or proposed regulations under the Internal Revenue Code of 1954, as amended.
- 1.20 Commencement Date shall be the Effective Date.
- 1.21 County shall mean Broward County, a political subdivision of the State of Florida.
- 1.22 Debt Service Reserve Requirement shall mean the amounts required to be maintained by the County in the Reserve Account pursuant to the Bond Resolution and in any debt service reserve account pursuant to the Subordinated Bond Resolution.
- 1.23 Director of Aviation or Director shall mean the person designated Director of Aviation by the Board of Commissioners or such other person, division, department, bureau, or agency as may be designated by the Board of Commissioners from time to time to exercise functions equivalent or similar to those now exercised by the Director of Aviation; the term also includes any person expressly designated by the Director of Aviation to exercise rights and/or obligations empowered in the "Director" under this Agreement.
- 1.24 Effective Date shall mean that date upon which this Agreement is executed by or on behalf of the Board of Commissioners.
- 1.25 Environmental Laws shall mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.).

- 1.26 Environmental Site Assessment or ESA shall mean a document based on one or more environmental site assessments, examinations, inspections, tests, inquiries and surveys necessary to identify Recognized Environmental Conditions, contamination, and the presence of any Hazardous Materials in, on, or under the surface of the Leased Premises, as defined in the TBLA.
- 1.27 Equipment and Capital Outlay shall mean any single item not included in "Operation and Maintenance Expenses," as defined below, or defined as a Capital Expenditure.
- 1.28 FAA shall mean the Federal Aviation Administration, an agency of the United States government, or any successor agency.
- 1.29 Fiscal Year shall mean the then current annual accounting period of the County for its general accounting purposes which period, at the time of entering into this Agreement, is the period of twelve (12) consecutive calendar months ending with the last day of September of any year.
- 1.30 General Purposes Account shall mean the General Purposes Account in the Aviation Fund established by Section 501 of the Bond Resolution, and any corresponding account (by whatever name given thereto) established by the Subordinate Bond Resolution.
- 1.31 Hazardous Material shall mean any material or substance identified, listed, or defined as a "hazardous waste," "hazardous substance," "pollutant," or "contaminant" under applicable Environmental Laws, which term shall include asbestos and asbestos-containing materials, petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.
- 1.32 Interest Account shall mean the interest account in the Bond Fund established by Section 501 of the Bond Resolution and the corresponding account (by whatever name given thereto) established by the Subordinate Bond Resolution.
- 1.33 Improvements Account shall mean the improvements account in the Aviation Fund established by Section 501 of the Bond Resolution and any corresponding account (by whatever name given thereto) established by the Subordinate Bond Resolution.
- 1.34 Majority in Interest of Airlines or MII shall mean at least fifty percent (50%) in number of the Signatory Airlines not currently in default of this Agreement and actively engaged in providing air transportation to and from Airport. As of the time when approval of a particular undertaking is requested, such Majority in Interest of Airlines shall have collectively paid more than one-half (1/2) of the following:
- A. Terminal fees and charges payable directly to County by all Signatory Airlines, including Affiliates during the most recent six (6) month period; and
 - B. Landing fees payable directly to County by all Signatory Airlines, including Affiliates during the most recent six (6) month period during which none of the Signatory Airlines experienced schedule reductions at Airport because of labor disputes.

All-cargo Signatory Airlines, as described in Section 1.55 of this Agreement, shall only have Majority in Interest rights as it relates to the approval of issues related to the Airfield cost center.

- 1.35 Maximum Gross Landing Weight shall mean the standard maximum gross certificated landing weight in one thousand pound units for each aircraft operated at the Airport by Airline as certified by the FAA or its successor.
- 1.36 Non-AMT Bonds or Non-AMT Debt shall mean tax-exempt bonds or debt the interest on which are not treated as an item of tax preference for individuals and corporations under Section 57 of the Code for purposes of the alternative minimum tax imposed by Section 55 of the Code and any successor thereto.
- 1.37 Non-Revenue Landing shall mean any aircraft landing by Airline at the Airport for a flight for which the Airline receives no revenue, which shall include any flight, that after having taken off from the Airport and without making a landing at any other airport, returns to land at the Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.
- 1.38 Operation and Maintenance Expenses shall mean the County's current expenses for the operation, maintenance, and repair of the Airport System as determined in accordance with generally accepted accounting principles, including, without limiting the generality of the foregoing, all ordinary and usual expenses of operation, maintenance, and repair, administrative expenses, salaries, payments to any retirement plan or plans properly chargeable to the Airport System, insurance expenses, engineering expenses relating to the operation, maintenance, or repair of the Airport System, taxes imposed by any governmental authority on the Airport System or its operations, fees and expenses of the Trustee and the paying agents, legal expenses, security expenses, fees of consultants, and any other expenses required to be paid by the County under the Bond Resolution or Subordinate Bond Resolution or by law, but Operation and Maintenance Expenses shall not include any reserves for extraordinary replacements or repairs, any allowance for depreciation, any principal payment in respect of capital leases or subordinated debt, or any deposits to any fund or account created under the Bond Resolution or Subordinate Bond Resolution.
- 1.39 Operation and Maintenance Requirement shall mean as of the date of determination one-sixth (1/6) of the amount shown by the Annual Budget as Operation and Maintenance Expenses for the then current Fiscal Year.
- 1.40 Other Indebtedness shall mean any debt incurred by County for Airport System purposes which is outstanding and not authenticated and delivered under and pursuant to the Bond Resolution or any Subordinate Bond Resolution.
- 1.41 Passenger Facility Charge or PFC shall mean the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended during the Term of this Agreement.
- 1.42 Preferential Use Premises shall mean those portions of the Terminal and preferentially leased gates assigned to Airline, to which Airline shall have priority over other users, subject to the provisions of the TBLA.

- 1.43 Prior Agreements shall include the following agreements between the Airline and the County that are in existence immediately prior to the Effective Date of this Signatory Agreement: any Airline-Airport Lease and Use Agreement, Airline-Airport Lease and Use Agreement and Addendum, Terminal Building Lease Agreement and Field Usage Agreement, all as amended modified or revised, prior to the Effective Date. The provisions of the Prior Agreements are terminated as of the Effective Date of this Agreement, except as provided in Section 23.5.
- 1.44 Principal Account shall mean the principal account in the Bond Fund established by Section 501 of the Bond Resolution and any corresponding account (by whatever name given thereto) established by the Subordinate Bond Resolution.
- 1.45 Rate Stabilization Sub-Account shall mean the rate stabilization sub-account established by Article IX of this Agreement within the General Purposes Account in the Aviation Fund, together with separate sub sub-accounts to be established therein for the Terminal and for the Airfield.
- 1.46 Release shall mean any spilling, leaking or discharging into the environment.
- 1.47 Renewal and Replacement Account shall mean the renewal and replacement account established by Section 501 of the Bond Resolution and any corresponding account (by whatever name given thereto) established by the Subordinate Bond Resolution. Said account shall include Equipment and Capital Outlay.
- 1.48 Renewal and Replacement Account Requirement shall mean that amount necessary to maintain the level of the Renewal and Replacement Account as required under the Bond Resolution or Subordinate Bond Resolution, as applicable.
- 1.49 Reserve Account shall mean the reserve account in the Bond Fund established by Section 501 of the Bond Resolution and any corresponding account (by whatever name given thereto) established by the Subordinate Bond Resolution.
- 1.50 Revenue Bonds shall mean (i) the revenue bonds authorized and issued by the County pursuant to the Bond Resolution and (ii) the subordinate revenue bonds authorized and issued by the County pursuant to the Subordinate Bond Resolution.
- 1.51 Revenues shall mean those revenues as defined in the Bond Resolution or Subordinate Bond Resolution, as applicable.
- 1.52 Revenue Landing shall mean an aircraft landing by Airline at the Airport for which Airline receives revenue.
- 1.53 Scheduled Air Carrier shall mean any airline providing scheduled air transportation services to and from Airport, at any relevant point in time, which airline shall hold any necessary authority to provide such transportation from the appropriate federal or state agencies having jurisdiction to grant such authority, if required under applicable law.
- 1.54 Sinking Fund Account shall mean the sinking fund account in the Bond Fund

established by Section 501 of the Bond Resolution and any corresponding account (by whatever name given thereto) established by the Subordinate Bond Resolution.

- 1.55 Signatory Airline shall mean any Scheduled Air Carrier that: (i) leases at least one gate and the associated hold room; and (ii) leases a minimum of 4,000 square feet of Type 1, Type 2 or Type 3 space, as described in **Exhibit B**, which consists of any combination of the following: (1) Ticket Counter, (2) Airline Ticket Office, (3) Other Terminal Office Space, (4) Baggage Service Office, (5) Baggage Makeup Device, or (6) Curbside and/or Operations Space, as described in **Exhibit B**; and (iii) simultaneously executes both: (1) an agreement substantially similar to this Agreement, and (2) a Signatory Terminal Building Lease Agreement. An all-cargo Scheduled Air Carrier shall be considered a Signatory Airline if it guarantees an annual minimum of 350,000,000 pounds of Maximum Gross Landing Weight throughout the Term of this Agreement, and executes an agreement with County substantially similar to this Agreement. After each annual anniversary of the Board's approval of an all-cargo Agreement, the Aviation Department shall review the monthly activity reports and other data specified in Section 7.3B of this Agreement to determine if the guaranteed annual Maximum Gross Landing Weight has been achieved. If the guaranteed annual Maximum Gross Landing Weight has not been achieved, an invoice for the shortfall shall be issued by the Aviation Department to the all-cargo Signatory Airline at the applicable landing-fee rates, and in accordance with Section 7.5 of this Agreement.
- 1.56 Signatory Agreement shall mean, as the context requires, this Agreement or any agreement executed by the County and another airline that is substantially similar to this Agreement.
- 1.57 South Runway Expansion Program or Runway Program shall mean the planning, design, acquisition, construction, installation and equipping required for or in connection with the extension of the south runway (28L/10R) at the Airport, including all associated actions, including but not limited to, land acquisition.
- 1.58 Special Purpose Bonds shall mean revenue bonds authorized and issued by County to construct any Special Purpose Facilities.
- 1.59 Special Purpose Facilities shall mean any capital improvements or facilities acquired or constructed by County from funds other than Revenues or obligations payable from Revenues and located or to be located on any property included under the definition of Airport System.
- 1.60 Subordinate Bond Resolution shall mean a bond resolution or indenture, as the same may be supplemented or amended from time to time, authorizing the issuance by County of Subordinated Debt in the manner described and in accordance with the requirements of Section 716 of the Bond Resolution, provided that no such amendment or supplement shall be inconsistent with the rights or obligations of the parties under this Agreement and the TBLA.
- 1.61 Subordinated Debt shall mean any bonds or other financing instrument or obligation authorized and issued pursuant to the Bond Resolution.

- 1.62 Term or Term of this Agreement shall mean the period commencing on the Effective Date and ending at midnight on September 30, 2026, unless otherwise terminated earlier as provided for herein.
- 1.63 Terminal shall mean the terminal buildings at the Airport, including any expansion thereof or any improvement thereto.
- 1.64 Terminal Building Lease Agreement or TBLA shall mean the Signatory Terminal Building Lease Agreement executed by the Airline and County contemporaneously with this Agreement.
- 1.65 Transfer shall mean transfers of money from the General Purposes Account to the Revenue Account, as contemplated and provided for in the Bond Resolution.
- 1.66 Trustee shall mean the entity or entities, whether original or successor, at the time serving as such under the Bond Resolution and/or the Subordinate Bond Resolution.
- 1.67 TSA shall mean the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

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

ARTICLE II USE OF AIRPORT AND RIGHTS OF AIRLINES

2.1 Use of the Airport

Airline may use, in common with others, the public landing areas of the Airport, which includes the runways, taxiways, navigational aids, and such other appurtenances or additions thereto as may be provided by County from time to time; provided that such use by Airline shall not prevent or interfere with the maintenance, alteration, addition, or deletion of any such facilities by County, and which use is also subject to reasonable rules and regulations.

2.2 Specific Rights at Airport

- A. Airline shall have the right, in addition to all rights elsewhere granted in this Agreement, to use Airport for the following purposes:
1. The operation of an air transportation system for the carriage of persons, property, freight and mail, including all activities reasonably necessary to such operation.
 2. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing and testing of aircraft or other equipment in areas designated or approved by County, of aircraft operated by Airline, its Affiliates, or other Signatory

Airlines with which Airline has an agreement. Any such agreement shall first be approved by County, and County's approval may be withdrawn at any time upon sixty (60) days notice to Airline and the other Signatory Airlines. County may levy a charge against Airline not to exceed five percent (5%) of Airline's gross fees for such services. However, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.

3. The sale of tickets, and ticket related services, documentation of shipments, handling of reservations, and the loading and unloading of persons, property and mail at Airport by such motor vehicles or other means of conveyance as Airline may desire to use in the operation of its air transportation business provided, however, that Airline shall only contract with service providers licensed and approved by County to deliver property and to carry persons or their baggage to and from the Airport. County shall not unreasonably withhold its approval of the licensing of a service providers designated by Airline to transport Airline personnel or lost baggage to and from the Airport.
4. The training at Airport of persons and testing of aircraft and other equipment at Airport, such training and testing to be limited to that incidental to Airline's air transportation business at Airport and shall not be construed as allowing any flight training whatsoever on the Airport. All such training shall be subject to reasonable regulations and licensing requirements as the County may establish.
5. The purchase of Airline's requirements of personal property and services incidental to Airline's air transportation business, including but not limited to fuel, lubricants, food, beverages and any other materials and supplies to be used by or services performed for Airline from any person or company of Airline's choice, provided that any such company or person has complied with all Applicable Laws, and such reasonable rules and regulations and licensing requirements of the Aviation Department and the County as may be adopted and revised from time to time, permitting such company or person to operate at the Airport. Nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. Fuel tenders are prohibited on Terminal aircraft aprons serviced by the fuel hydrant system except by separate authorization of County. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and County.
6. The sale, disposal and exchange of Airline's aircraft, engines, accessories, other equipment, materials and supplies, and the exchange of fuel, oil and lubricants with other tenant Scheduled Air Carriers; provided that such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform such transactions as are incidental to the operation of its air transportation business. Airline shall not have the right to sell fuel, oil and

lubricants or provide in-to-plane fuel services to others at the Airport.

7. The servicing of Airline's aircraft and other equipment with fuel, oil, lubricants and other materials and supplies at the Gates and other locations designated by County for such servicing.
8. The installation and operation of identifying signs on Airline Premises under the TBLA; and the general type, design and location of all of such signs visible to the public shall be subject to County approval, not to be unreasonably withheld.
9. The installation, maintenance and operation of radio, communication, company telephone system, computer, meteorological and aerial navigation equipment and facilities in, on and about the Airline Premises under the TBLA, as may be necessary or convenient in the opinion of Airline for its operations; provided, however, that Airline shall be required to use County's wireless communications systems unless Airline has obtained prior written approval from the Aviation Department exempting Airline from such requirement (e.g. WIFI), which approval shall not be unreasonably withheld by the Aviation Department. Airline agrees that any use by Airline of wireless communications systems not provided by County shall not interfere with any County wireless communications system. Prior to any written approval, Airline shall provide the Aviation Department with all necessary supporting documentation related to such installations.
10. The provision, either alone or in conjunction with other air transportation companies or through a nominee, of porter/skycap service for the convenience of the public, at no cost to the County.

B. Exclusions and Reservations

1. The rights and privileges granted Airline under this Article with respect to the performance of ground services and activities in connection with its air transportation operations at Airport may be exercised by any company or person designated by Airline, provided, however, that no right is hereby conferred upon any supplier of services or materials (other than Airline) regularly operating at Airport to perform services unless it holds a valid lease, license, permit, or other agreement with County authorizing it to furnish the material and/or perform the service in question and pays to County an appropriate rental, fee and/or percentage of gross revenues derived as a result of any materials furnished or services supplied to other than Airline.
2. The rights and privileges granted to Airline under this Article to contract with third parties for obtaining services and materials shall be subject and subordinate to restrictive agreements, franchises, licenses, and other rights previously granted by County to fixed base operators, ground transportation carriers, other providers of ground services, and others. Copies of such agreements are available for inspection by Airline at the office of the Aviation Department.

3. Airline is prohibited from conducting any business or engaging in any activities at the Airport other than the conduct of its air transportation business, except as otherwise permitted in this Agreement.
4. Airline shall not knowingly interfere or permit interference by its contractors, agents, permittees, and invitees with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport. Airline shall not engage in any activity prohibited by County's approved FAR Part 150 Noise Compatibility Study, as may be amended or supplemented from time to time.
5. Airline shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in County's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from County to do so.
6. Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement or the TBLA are hereby reserved for and to County.

2.3 Right of Access, Ingress and Egress

Airline, its employees, agents, passengers, guests, patrons, invitees, suppliers of materials and services, and its or their equipment, vehicles, machinery and other property shall have the right of access, ingress and egress to and from the Airport, subject to reasonable rules and regulations of County.

County may at any time temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway, taxiway or other access to the Airport, so long as a reasonable means of ingress and egress is concurrently made available to Airline.

2.4 Affiliates

Affiliates of Airline must enter into an agreement with County for operations at the Airport, which agreement shall be in a form specified by County from time to time. County may invoice Airline and its Affiliates separately for amounts owed hereunder, or may invoice Airline for the aggregate amounts owed by Airline and its Affiliates hereunder. Airline shall be responsible for any and all unpaid fees, rates and charges of any Affiliate and any failure of any Affiliates to pay such amounts when due shall be deemed a failure of Airline. Airline may at any time give County at least thirty (30) days prior written notice that an Affiliate of Airline shall no longer be considered an Affiliate of

Airline for purposes of this Agreement, and Airline shall have no responsibility for any fees, rates and charges incurred by any such Affiliate after the conclusion of such notice period, but Airline shall remain liable for all fees, rates and charges incurred by any Affiliates prior to the conclusion of such notice period.

ARTICLE III
FINANCING AND CONSTRUCTION OF THE CAPITAL IMPROVEMENT PROGRAM AND
OTHER CAPITAL IMPROVEMENTS

3.1 Need for Capital Improvements

The parties hereto recognize that capital improvements to preserve, protect, enhance, expand, and otherwise improve the Airport System, or part thereof, will be required during the Term of this Agreement. Any such capital improvements to be paid with Revenues or financed through the County's issuance of Revenue Bonds shall be subject to the provisions of Sections 3.3 and 3.4, below.

3.2 Pre-Approved Capital Improvement Plan

The Airline has previously approved one or more projects for the Airport, including, without limitation, the Runway Program, and the parties acknowledge that such previous projects, including, without limitation, the Runway Program, are hereby affirmed and not modified by this Agreement. Additionally, the County has identified on **Exhibit A** its Capital Improvement Plan. The portion of the Capital Improvement Plan expected to be undertaken during the first Fiscal Year of this Agreement including, without limitation, all associated Capital Expenditures, is hereby approved by Airline. By executing this Agreement, Airline agrees, without further MII approval, to the inclusion of the Airport Debt Service Requirement, Debt Service Reserve Requirement, Operation and Maintenance Expenses, Operation and Maintenance Requirement, and Equipment and Capital Outlay associated with all projects previously approved and including, without limitation, the Runway Program, in the determination of Airline's rentals, charges and fees.

3.3 Expenditures Subject to Signatory Airline Consideration.

- A. Prior to June 1 of each year of the Term, and if appropriate, at such other times during a Fiscal Year, County shall submit to Airline, for Airline's review and consideration, County's recommended Capital Expenditures which are not excluded from Majority-in-Interest consideration pursuant to Sections 3.2 and 3.4. Airline shall notify County in writing within forty-five (45) days after receipt of the written submission from County whether such Capital Expenditures are approved as a whole or in part. Failure of Airline to reply within forty-five (45) days shall be deemed approval by Airline of the recommended Capital Expenditures.
- B. County may issue Revenue Bonds or incur Other Indebtedness to finance any Capital Expenditures permitted by this Article III. All costs associated with any Capital Expenditures permitted by this Article III, including but not limited to, Airport Debt Service Requirement, Debt Service Reserve Requirement, and Operation and Maintenance Expenses, Operation and Maintenance Requirement, and Equipment

and Capital Outlay shall be included in the determination of rates for rentals, fees, and charges in accordance with **Exhibit B**.

- C. If certain specified conditions precedent are met, the Bond Resolution will permit the issuance of Revenue Bonds on parity with the Revenue Bonds issued and outstanding under the Bond Resolution to finance the cost of planning, design, acquisition, construction, installation and equipping of any Capital Expenditures or to complete such Capital Expenditures. The Bond Resolution also permits the issuance of subordinate Revenue Bonds under a Subordinate Bond Resolution for such purposes. It is hereby agreed that County will obtain MII approval of any Capital Expenditures prior to financing the same with Revenue Bonds issued under the Bond Resolution or subordinate Revenue Bonds under a Subordinate Bond Resolution, except for Capital Expenditures which do not require MII approval pursuant to Sections 3.2 or 3.4.
- D. If certain specified conditions precedent are met, the Bond Resolution will permit the issuance of refunding Revenue Bonds on parity with the Revenue Bonds issued and outstanding under the Bond Resolution to refund outstanding Revenue Bonds. Subordinate Revenue Bonds may also be issued under a Subordinate Bond Resolution for such purposes. It is hereby agreed that the County may issue such refunding Revenue Bonds under the Bond Resolution or Subordinate Bond Resolution after consultation with Airline, but without MII approval, provided that the debt service (principal and interest requirements) on the refunding Revenue Bonds in any year is not more than one hundred five percent (105%) of the debt service which would have been due in such year on the Revenue Bonds to be refunded.

3.4 Capital Expenditures Not Subject to Signatory Airline Consideration.

The following Capital Expenditures shall be permitted to be undertaken by the County at any time and shall not be subject to consideration by the Signatory Airlines or require MII approval:

- A. Projects required for public safety when required by the FAA, National Transportation Safety Board or governmental authority having jurisdiction over the Airport System, Airline's operations, or the safety aspect of Airport's operations.
- B. Casualty damage to Airport System property which exceeds the proceeds of insurance, which property must be rebuilt or replaced in order to satisfy County obligations or maintain a source of Revenue.
- C. Special Purpose Facilities as defined herein, provided, however, in cases where such Special Purpose Facilities occupy a building site, an appropriate ground rental shall be charged. In all cases, the tenants or other users of such Special Purpose Facilities shall be required to pay directly or reimburse County for all costs (direct or indirect) associated with such Special Purpose Facilities.
- D. Improvements or additions necessary to insure compliance with lawful orders or requirements of other authorities that are pertinent to aircraft operations, or Airport operations, or are related to the issuance of federal or state grants to County.

- E. Improvements or additions necessary to settle claims, satisfy judgments, or comply with orders against County by reason of its ownership, operation, maintenance, or use of the Airport System.
- F. Capital Expenditures of an emergency nature which, if not made within forty-eight (48) hours, would result in the closing of any portion of the Airport System.
- G. Capital Expenditures that are funded through the Renewal and Replacement Account.
- H. Change orders initiated by one or more Signatory Airlines for its or their sole benefit, provided the costs related thereto shall be borne by the Signatory Airlines initiating such change orders.
- I. Expansion of the Airport System for the increased requirements of any Signatory Airlines provided such Signatory Airlines agree in writing to increased rentals, fees and charges sufficient to cover the payment of debt service and required reserves if financed with Revenue Bonds, or an equivalent amount if financed from the Improvements Account or General Purposes Account to finance its exclusive facilities. If said expansion necessitates the concurrent construction of related public areas and/or support systems, such facilities will be treated as a cost of construction, operation and maintenance to be shared in common by the airlines in the same manner as other similar public areas and/or support systems previously constructed.
- J. Projects required by the FAA, the Department of Transportation or other governmental authority, other than County, having jurisdiction over the Airport.
- K. Facilities or equipment for which the tenants or other users thereof shall be required to pay directly, or reimburse County for, all capital costs, including finance costs, associated with such facilities.

ARTICLE IV
OPERATIONS OF AIRLINE

- 4.1 Airline shall comply with all Applicable Laws in performing its duties, responsibilities, and obligations related to this Agreement.
- 4.2 The Airline shall, at its own expense, provide and maintain in full force and effect, any and all licenses and permits required for the legal operation of all aspects of the Airline's business conducted at the Airport. Airline shall pay all license and permit fees and charges for the conduct of any business on the Airport before such amounts become delinquent.

ARTICLE V
TERM

- 5.1 This Agreement shall become effective, and the "Effective Date" shall be that date set forth in Article I. The Term of this Agreement and the terms and conditions of this

Agreement shall commence on the Effective Date and this Agreement shall expire on midnight, September 30, 2026, unless otherwise terminated earlier as provided for herein.

ARTICLE VI
MAINTENANCE AND OPERATION OF AIRPORT

6.1 General

- A. County agrees that it will with reasonable diligence and in order of priority determined by County in its discretion prudently develop, improve, and at all times maintain and operate the Airport with qualified personnel and keep the Airport in good repair.
- B. County shall, to the extent it is legally able so to do, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. County shall not be liable to Airline for a temporary failure to furnish all or any of such services to be provided in accordance with this Section 6.1 when such failure is due to mechanical breakdown not caused by the County, or its agent's, contractor's, or invitee's negligence or is due to any cause beyond the reasonable control of the County or its agents, contractors or invitees.
- D. County shall, in the operation of the Airport, comply with all Applicable Laws.
- E. Airline shall be responsible for areas damaged by its or its Affiliates use or operations and Airline shall further maintain any apron areas used by it or its Affiliates in a clean, neat, orderly condition.

ARTICLE VII
RATES, RENTALS, FEES AND CHARGES

7.1 Landing Fees

From and after the Commencement Date of this Agreement, fees and charges for use of the facilities, rights, licenses and privileges granted to Airline with respect to the Airfield under this Agreement, shall be combined in and represented by a landing fee, and certain other fees as set forth in, and payable at rates calculated in accordance with, **Exhibit B**, as previously amended from time to time pursuant to the adjustment of rates for rentals, fees and charges provided for in Article VIII. Said rates for landing fees will be expressed in dollars and cents per thousand pounds of the Maximum Gross Landing Weight of each type of Airline's aircraft and shall be multiplied by the total of the Maximum Gross Landed Weight for all Revenue Landings of each type of aircraft landed at the Airport by Airline.

7.2 Other Rates for Rentals, Fees and Charges

All rates rentals, fees and charges for the use of the Airport that are not set forth in

Exhibit B, shall be set by the County from time to time.

7.3 Information to be supplied by Airline

A. Airline shall submit to the Aviation Department, in an Aviation Department provided format, electronically, all reasonably requested information, which information shall include but not be limited to the following:

1. Proposed arrival/departure schedules for activities at the passenger Terminal buildings.
2. Airline covenants and agrees to furnish County each month a report of Airline's operations at the Airport during the preceding month setting forth the total number of enplaning passengers, the total pounds of enplaned mail, express and freight on a daily basis carried by Airline and any of its Affiliates, the number of Revenue Landings by Airline by type of aircraft, the number of remain over nights ("RONs") on non-leased premises by Airline and its Affiliates, and such other information as County may reasonably require to administer the Agreement. If such report is not provided, County may estimate such data and impose fees on Airline accordingly.

B County shall have the right, but shall not be required, to rely on said activity reports in determining rentals, fees and charges due hereunder. County may also rely on alternative sources of information, such as FAA statistics and electronic data collection systems, to determine rentals, fees and charges due hereunder. Use of such alternative sources by County shall not relieve Airline of its reporting obligations hereunder. To the extent there is a discrepancy between the information provided by Airline and information gathered from other sources, County's determination as to the most reliable and accurate information shall be conclusive and binding on the parties, absent fraud or manifest error. Airline shall have full responsibility for the accuracy of said reports. Payment deficiencies of more than ten percent (10%) by category of rentals, fees, and charges due on an annual basis hereunder that are due to incomplete or inaccurate activity reports shall be subject to interest charges, at a rate of eighteen percent (18%) per annum.

7.4. Airline shall be responsible for and shall pay to the County, all applicable rentals, rates, fees and charges for the use of the Airport as may be set by the County from time to time in accordance with this Agreement, the TBLA and the rate resolution adopted not less than annually by the County, including, but not limited to, landing fees and aircraft remote parking fees, and all other rates, fees and charges for activities under this Agreement (collectively, "County Fees"), together with any applicable sales taxes thereon.

A. All County Fees payable pursuant to this Agreement and the TBLA shall be effective and accrue from the Commencement Date.

B. The County shall have the right, through its representatives, at all reasonable times, without interfering with airline operations, to inspect any and all books and records pertaining to Airline's arrivals and departures at the Airport. Such records shall be kept and maintained during the "Retention Period," which shall be the

greater of: (i) the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or (ii) for a period of three (3) years following the activity. If the Florida Public Records Act is determined to be applicable to Airline's records, Airline shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Airline. If, as a result of any audit, it is established that the Airline has understated the amount owed to the County by ten percent (10%) or more (after the deductions and exclusions provided for herein) of the amount paid to the County during the previous annual reporting period under this Agreement, the entire expense of said audit shall be borne by the Airline. Any additional fees due shall forthwith be paid by the Airline to the County with interest thereon at eighteen percent (18%) per annum from the date such additional fees become due.

7.5 Airline shall pay County Fees directly to the County, as follows:

- A. No later than the tenth (10th) day of each month, for the prior month's activities, the Airline shall electronically report on the forms required by the County ("Activity Reports"). The Activity Reports shall list all arrivals and departures at the Airport, including all revenue and non-revenue operations.
- B. Payment of the Airline landing fees shall be due fifteen (15) days from the date of County's issuance of invoice, and shall be deemed delinquent if not received within ten (10) days of the due date.
- C. Payment for all other fees and charges due hereunder, shall be due as of the due date stated on the County's invoice. Said fees and charges shall be deemed delinquent if payment is not received within thirty (30) days of the stated date of such invoice.
- D. Payments received by County after the dates required by subsections 7.5B and 7.5C above, shall accrue and be subject to interest at the rate of eighteen percent (18%) per annum on the unpaid amount. The acceptance by County of any late payment shall not be construed as a waiver of the interest charge.
- E. Airline shall submit all activity reports and payments to the County on the dates established above, as follows:

Via Wire Transfer:

Account of: Broward County Aviation Department
Bank Name: Wells Fargo Bank
ABA: 121000248
Account #: 2090002760835

Via U.S. Mail/Express Mail

Broward County Aviation Department
Accounts Receivable
2200 SW 45th Street, Suite 101
Dania Beach, FL 33312

- F. Security Deposit

1. Unless Airline has provided regularly scheduled flights to and from the Airport during the eighteen (18) calendar months prior to the Effective Date of this Agreement, without the occurrence of any act or omission that would have been an event enumerated in Section 10.1 of this Agreement, Airline shall provide County on the Effective Date of this Agreement, with a contract bond, irrevocable letter of credit or other similar security acceptable to County ("Security Deposit") in an amount equal to the estimate of three (3) months' of fees and charges for Airline and its Affiliates, which are due County pursuant to this Agreement. Airline shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive calendar months during which period Airline and its Affiliates commit no event enumerated in Section 10.1 of this Agreement. Such Security Deposit shall be in a form and with a company reasonably acceptable to County and licensed to do business in the State of Florida. In the event that any such Security Deposit shall be for a period less than the full period required by this subsection 7.5F or if Security Deposit shall be canceled, Airline shall provide a renewal or replacement Security Deposit for the remaining required period at least sixty (60) calendar days prior to the date of such expiration or cancellation. The parties agree that in the event Airline satisfies the requirements for Aviation Department to waive the Security Deposit pursuant to this subsection 7.5F1, no Security Deposit shall be required for its Airline or its Affiliates, so long as the requirements for such waiver have been satisfied and remain satisfied throughout the term of this Agreement.
2. In the event County is required to draw down or collect against Airline's Security Deposit for any reason, Airline shall, within ten (10) business days after County's written demand, take such action as may be necessary to replenish the existing Security Deposit to its original amount (three months' estimated rentals, fees, and charges) or to provide additional or supplemental Security Deposit from another source so that the aggregate of all Security Deposits is equal to three months' estimated rentals, fees, and charges payable by Airline and its Affiliates pursuant to this Article VII.
3. Notwithstanding the above subsection 7.5F1, County shall have the right in its reasonable discretion to waive such Security Deposit requirements for an Airline, if it has not provided regularly scheduled flights at and from the Airport during the eighteen (18) calendar months prior to the Effective Date of its Signatory Agreement. Any such waiver by County shall be conditioned upon said Signatory Airline having provided regularly scheduled flights at least at six (6) other airports with activity levels and characteristics similar to the Airport (the "Comparable Airports") during the most recent eighteen (18) calendar month period, without committing any material default under the terms of the respective lease and use agreements at each of the Comparable Airports, and without a pattern of untimely payments for rentals, fees and charges. The burden shall be on Airline to demonstrate to County its compliance with these requirements at each of the Comparable Airports.
4. In addition to the foregoing, upon the occurrence of any Airline act or

omission that is an event enumerated in Section 10.1, or upon Airline's election to assume this Agreement under all Applicable Laws, including Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984 or any successor statute, as such may be amended, supplemented, or replaced, County, by written notice to Airline given at any time within ninety (90) calendar days of the date such event becomes known to County, may impose or reimpose the requirements of subsection 7.5F1 on Airline. In such event, Airline shall provide County with the required Security Deposit within fifteen (15) calendar days from its receipt of such written notice and shall thereafter maintain such Security Deposit in effect until the expiration of a period of eighteen (18) consecutive calendar months during which Airline commits no additional event enumerated in Article X or the termination of bankruptcy proceedings, whichever is later.

5. If Airline shall fail to obtain and/or keep in force such Security Deposit required hereunder, after County has provided a ten (10) calendar day notice to cure, such failure shall be grounds for immediate cancellation of this Agreement pursuant to Article X. County's rights under this Section 7.5 shall be in addition to all other rights and remedies provided to County under this Agreement.
6. Airline and County agree that this Agreement constitutes an 'executory contract' for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 USC) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Furthermore, Airline and County agree that any Security Deposit provided by Airline is not 'property of the estate' for purposes of Section 541 of the United States Bankruptcy Code (Title 11 USC), it being understood that any Security Deposit is property of the third party providing it (subject to County's ability to draw against the Security Deposit) and that all PFCs collected by Airline with respect to enplaned passengers at the Airport, are property of County to the extent provided by Applicable Law.

7.6 In the event the Airline delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Airline shall incur and pay a service charge in the amount set by the State of Florida or Applicable Laws. In such event, the County may require that future payments be made by cashier's check or other means acceptable to the County.

7.7 Passenger Facility Charge

- A. County expressly reserves the right to impose PFC's on airline passengers for the use of the Airport in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Part 158, as they may be amended from time to time (the "PFC Regulations").
- B. Airline shall hold in trust for the County the net principal amount of all PFCs that are collected by Airline or its agents on behalf of County. For the purposes of this Section 7.7, "net principal amount" shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of the County,

reduced by any amount that the Airline is permitted to retain pursuant to 49 U.S.C. § 40117 and the PFC Regulations. Monthly PFCs collected by Airline shall be remitted to County no later than the last day of the following calendar month or if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by Airline shall be remitted to County as specified in subsection 7.7C.

- C. Should Airline fail to remit the net principal amount of all PFC's to County within five (5) days following the remittance date specified above, Airline shall be deemed to be in default pursuant to Article X of this Agreement.
- D. Competitive Access to PFC Funded Facilities. Should the Airline not fully utilize any portion of its PFC funded exclusively leased premises, Airline agrees to make such Premises available for use by any Scheduled Air Carrier. In accordance with 14 CFR Part 158, failure to make such exclusively leased premises available shall be grounds for termination of this TBLA pursuant to Article XI.
- E. Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 CFR Part 158 regarding Passenger Facility Charges. In the event that a conflict exists between such federal regulation and this Agreement, the federal regulation shall govern.

ARTICLE VIII

ADJUSTMENT OF RATES FOR RENTALS, FEES AND CHARGES

8.1

- A. Rates for rentals, fees and charges for the Airport System will be reviewed annually and adjusted as necessary effective October 1 of each Fiscal Year and from time to time, if required to satisfy the requirements of subsection 8.1C hereof and Sections 704 (a) and (b) of the Bond Resolution and the corresponding rate covenant requirement of any Subordinate Bond Resolution.
- B. Adjustments will apply without the necessity of formal amendment of this Agreement, and a statement showing the calculation of the new rates for rentals, fees and charges in accordance with the format of **Exhibit B** shall be prepared by County and delivered to Airline with an appropriate resolution by County, which shall then be deemed a part hereof.
- C. Notwithstanding anything to the contrary contained in this Agreement, rates for rentals, fees and charges will be in accordance with **Exhibit B**; provided that the resulting rates, fees and charges shall satisfy the requirements of Sections 704 (a) and (b) of the Bond Resolution.

8.2 For purposes of accomplishing each annual adjustment, County shall, by June 1st of each year, submit to Airline historical audited financial results and forecasts sufficient to provide for reasonable comparison to proposed annual budget.

- A. Proposed Annual Budget

1. In the preparation of the proposed Annual Budget, the estimates of Revenues, Operating and Maintenance Expenses, Operating and Maintenance Requirement, and Equipment and Capital Outlay for the next ensuing Fiscal Year shall take into consideration the historical experience; surpluses or deficits, if any, in prior years. County and Airline shall meet between June 1st and July 1st of each Fiscal Year for the purpose of reviewing the information submitted to Airline. In such review, County will give fair and prudent consideration to Airline's suggestions, comments or requests in negotiations with Airline with respect to the amount, character and desirability of any items contained therein, and the new rates for rentals, fees and charges for the ensuing Fiscal Year, subject to the provisions of subsection 8.1C hereof and, Sections 704 (a) and (b) of the Bond Resolution and the corresponding rate covenant requirements of any Subordinate Bond Resolution.
2. Before the beginning of each Fiscal Year, County shall adopt its Annual Budget substantially in accordance with the information submitted to Airline for purposes of calculation of rates for rentals, fees and charges referred to above, as the latter may have been revised as a result of negotiations with Signatory Airlines.
3. If adjustment of rates for rentals, fees, and charges is not completed on or prior to the end of the Fiscal Year, the rentals, fees and charges then in existence shall continue to be paid by Airline until adjustment is concluded. During any such period when County is required to expend ten percent (10%) or more of the funds which should properly be on deposit in the Revenue Account as the Operation and Maintenance Requirement, or where there are insufficient Revenues available to make required deposits to the Interest, Principal, Sinking Fund and Reserve Accounts of the Bond Fund, the amounts so required may, at County's election, become a surcharge to the landing fees and/or rentals for the month in which such expenditures or deposits are made or required. Airline shall be credited with the amount of any such surcharge paid by it and said credit shall be applied to Airline's adjusted landing fees and/or rentals in the first month after the adjustment is implemented but only to the extent that such credit will not create a deficiency in the amount of Revenues under the Bond Resolution and, if applicable, any Subordinate Bond Resolution.

8.3 County covenants that for purposes of keeping its books of account and allocating revenues and expenses it will observe generally accepted accounting principles, consistently applied and including only those charges to the accounts directly attributable to the Airport System, on the basis of sound business principles for effective and prudent control of expenses for Airport System operation, maintenance and administration.

ARTICLE IX
BOND RESOLUTION AND SUBORDINATE BOND RESOLUTION: ESTABLISHMENT
OF FUNDS AND ACCOUNTS; EXPENDITURES FROM FUNDS AND ACCOUNTS

9.1. Subordination to Bond Resolution and Subordinate Bond Resolution

- A. This Agreement and all rights granted to Airline hereunder are expressly subordinated and made subject to the lien and pledge, payment and other covenants (including, without limitation, the rate covenants and reserve funding requirements), flow of funds and other provisions governing the use and application of Revenues and the rights and remedies granted to bondholders in the Bond Resolution and/or the Subordinate Bond Resolution. County and Airline agree that this Agreement is being entered into, among other reasons, to ensure that Revenues will be generated from the use and operation of the Airport to enable the County in each Fiscal Year to pay Operation and Maintenance Expenses, satisfy the Airport Debt Service Requirement and satisfy any and all other reserve funding requirements under the Bond Resolution and the Subordinate Bond Resolution. County and Airline further agree that to the extent required by the Bond Resolution, Subordinate Bond Resolution, or law, the holders of Revenue Bonds or their designated representatives shall have the right to exercise any and all rights of County hereunder.
- B. With respect to property leased by County to Airline which was or is to be acquired by County with proceeds of Revenue Bonds, the interest on which is, or is intended to be, excludable from the gross income of the holders of such Revenue Bonds for federal income tax purposes, the parties hereby covenant to protect the tax-exempt status of such Revenue Bonds.
- C. Airline agrees to execute all instruments, certificates, or other documents reasonably requested by County to assist County and bond counsel in determining and assuring that tax-exempt Revenue Bonds are issued in compliance with applicable rules and regulations of the Internal Revenue Service and in assisting County and disclosure counsel in preparing the disclosure documents required for the public offering of Revenue Bonds and assuring compliance with the Securities and Exchange Commission's continuing disclosure requirements, and Airline shall provide whatever additional relevant information is reasonably requested by County initially or on a continuing basis in connection with complying with any of those rules and regulations.

9.2 Creation of Accounts

- A. Pursuant to the Bond Resolution, the following Accounts have been created to be used for the purposes set forth in the Bond Resolution as they are used for the purposes of establishing airline rentals, fees, and charges pursuant to **Exhibit B**:
 - 1. Revenue Account;
 - 2. Interest Account;
 - 3. Principal Account;
 - 4. Sinking Fund Account;
 - 5. Reserve Account (Debt Service);
 - 6. Renewal and Replacement Account;
 - 7. Improvements Account; and
 - 8. General Purposes Account.

9.3. General Purposes Account

- A. Subject in all respects to the requirements of the Bond Resolution, amounts deposited to the General Purposes Account, shall be distributed among the following sub-accounts which are hereby established within the General Purposes Account, and within such sub-accounts, into the applicable sub-sub-accounts which are hereby established for the Terminal and the Airfield: (1) Airport Discretionary Sub-Account, (2) Rate Stabilization Sub-Account, and (3) Airline Fees and Charges Sub-Account. The distribution of funds among these sub-accounts, and the use of these funds, shall be as described in this Section 9.3.
- B. Deposits (if any) to the General Purposes Account established pursuant to the Bond Resolution shall be applied for the purposes and in the order of priority set forth in Section 5.10 of the Bond Resolution, including, without limitation, the payment of debt service and other funding requirements on Subordinated Debt incurred in the form of subordinate Revenue Bonds issued under the Subordinate Bond Resolution. Thereafter, any amounts remaining in the General Purposes Account established pursuant to the Bond Resolution shall be deposited first to the Airport Discretionary Sub-Account, but only into the applicable sub sub-accounts for the Terminal and the Airfield, then to the Rate Stabilization Sub-Account, if applicable, but only into the applicable sub sub-accounts for the Terminal and the Airfield, then to the Airline Fees and Charges Sub-Account, but only into the applicable sub sub-accounts for the Terminal and the Airfield.
- C. Any deposits into the applicable sub sub-accounts for the Terminal and the Airfield in the Rate Stabilization Sub-Account within the General Purposes Account, if any, are to be held in such sub sub-accounts to assist in moderating airline fees and charges, as applicable for the Terminal or the Airfield. If at any time it is determined through an MII ballot that amounts should be deposited to any of the sub sub-accounts of the Rate Stabilization Sub-Account such deposit should be to the applicable sub sub-account, as provided in the MII ballot. Any transfer from the Rate Stabilization Sub-Account should be to the corresponding sub sub-account in the Airline Fees and Charges Sub-Account. Such transferred amounts may be used as Transfers to the Revenue Account and used in determining Terminal rate base as described in **Exhibit B** if such Transfer is from the Terminal sub sub-account, or used in determining Airfield rate base as described in **Exhibit B** if such Transfer is from the Airfield sub sub-account. The Aviation Department shall notify the Signatory Airlines of proposed transfers from the sub sub-accounts in Rate Stabilization Sub-Account into the corresponding sub sub-accounts in the Airline Fees and Charges Sub-Account through the Annual Budget process. Such Transfers will be credited to the applicable Terminal rate base or Airfield rate base as described in **Exhibit B**.
- D. Subject in all respects to the provisions of the Bond Resolution and subsection 9.3B of this Agreement, any remaining balance from the monthly deposits to the General Purposes Account shall first be credited to the applicable sub sub-account in the Airport Discretionary Sub-Account up to an amount in any fiscal year not exceeding a total deposit of One Million Dollars (\$1,000,000.00) with a total Maximum Balance in the Airport Discretionary Sub-Account of Three Million Dollars (\$3,000,000); Expenditures from the applicable sub sub-accounts in the Airport Discretionary Sub-Account may be made by the Aviation Department at

its sole discretion for any legal purpose of the County in connection with either the Terminal or the Airfield, as applicable, or any other portion of the Airport System. The Aviation Department shall provide Airline with prior notification of such expenditures and with an annual detailed report of such expenditures. The Aviation Department may only expend funds from the Terminal sub sub-account in connection with the Terminal or any other portion of the Airport System other than the Airfield and the Aviation Department may only expend funds from the Airfield sub sub-account in connection with the Airfield.

- E. Subject in all respects to the provisions of the Bond Resolution and subsection 9.3B of this Agreement, any remaining balance after satisfying the requirements of subsections B, C, and D of this Section 9.3, any remaining deposits to the General Purpose Account shall be deposited to the appropriate sub sub-account in the Airline Fees and Charges Sub-Account. At the end of each Fiscal Year, any funds available in these sub sub-accounts in this Sub-Account shall be transferred to the Revenue Account established pursuant to the Bond Resolution in the succeeding Fiscal Year as a Transfer in establishing Airline rates for either the Terminal base rate or Airfield base rate pursuant to Article VIII, as applicable.

9.4. Other Accounts

- A. Each Annual Budget shall include planned expenditures (if any) from the Renewal and Replacement Account for the payment of the cost of renewals and replacements which are necessary to protect the revenue generating capacity of the Airport System and of engineering and other expenses incurred in connection therewith. These expenditures shall not be used for the extension, expansion or betterment of the Airport System and shall not be subject to MII approval. It is the intent of the parties that the County will use its best efforts to plan and budget such renewal and replacement expenditures in a manner to moderate the impact of these expenditures on rates, rentals, fees and charges during any given year. Subject to the provisions of the Bond Resolution, additional expenditures from the Renewal and Replacement Account can be made at any time from funds available in said Account for unusual or extraordinary repairs, renewals and replacements when it is apparent that routine maintenance is not effective or prudent to maintain the Airport System at a safe and essential level.
- B. Each Annual Budget shall include planned expenditures (if any) from the Improvements Account for the purchase of items of equipment or other capital items for use in connection with the Airport System. Prior approval of MII shall be obtained for Capital Expenditure paid for from amounts in the Improvements Account, except to the extent otherwise provided for in Section 3.4 or elsewhere in this Agreement.

ARTICLE X DEFAULT BY AIRLINE

10.1 Events of Default. The events described below in subsections A and B shall be deemed events of default by Airline hereunder:

- A. The conduct of any business or performance of any acts at the Airport not specifically authorized herein (except Security Deposit requirements, insurance

requirements, and payment of rentals, fees, and charges, all as provided for in Section 10.1B) or by other agreements between County and Airline, and said business or acts do not cease within thirty (30) calendar days of receipt of County's written notice to cease said business or acts. Notwithstanding the above, if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by Airline of written demand from County to do so, Airline fails to commence the remedying of such default within said thirty (30) calendar days following such written notice, or having so commenced, shall fail thereafter to continue with diligence the curing thereof. Airline shall have the burden of proof to demonstrate all of the following: (i) that the default cannot be cured within thirty (30) calendar days; and (ii) that it is proceeding with diligence to cure said default; and (iii) that such default will be cured within a reasonable period.

- B. Upon the occurrence of any one of the following events of default, County may immediately issue written notice of default.
1. The failure by Airline to pay any part of the rentals, fees, and charges when due, as provided for in this Agreement and the continued failure to pay said amounts in full within ten days from their respective due date. Provided, however, if a dispute arises between County and Airline with respect to any obligation or alleged obligation of Airline to make payments to County, payments under protest by Airline of the amount due shall not waive any of Airline's rights to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then County shall promptly reimburse Airline any amount determined as not due.
 2. The failure by Airline to provide and keep in force a Security Deposit in accordance with subsection 7.5F.
 3. The failure by Airline to provide and keep in force all insurance coverages in accordance with Article XVI.
 4. The appointment of a trustee, custodian, or receiver of all or a substantial portion of Airline's assets.
 5. The divestiture of Airline's estate herein by operation of law, by dissolution, or by liquidation, (not including a merger or sale of assets).
 6. The insolvency of Airline; or if Airline shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, or shall seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Airline of a voluntary petition of bankruptcy or the institution of proceedings against Airline the adjudication of Airline as a bankrupt pursuant thereto.
 7. The abandonment of Leased Premises or suspension of Airline's operations for a period greater than sixty (60) calendar days, which such

suspension shall be considered abandonment for the purposes of this Agreement absent a labor dispute or other governmental action in which Airline is directly involved.

8. The failure by Airline to remit PFCs in accordance with Section 7.7.
9. Failure by Airline to make any portion of its exclusively leased under-utilized PFC-funded Premises available for use by other Scheduled Air Carriers in accordance with Article VII.

10.2 Continuing Responsibilities of Airline. Notwithstanding the occurrence of any event of default, Airline shall remain liable to County for all rentals, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Unless County elects to terminate this Agreement, Airline shall remain liable for and promptly pay all rentals, fees, and charges accruing hereunder until termination of this Agreement as set forth in Article 5 or until this Agreement is terminated by Airline pursuant to Article XI. Upon any termination of this Agreement, the parties shall remain liable for all obligations and liabilities accruing prior to such termination.

10.3 County's Remedies. Upon the occurrence of any event enumerated in subsections 10.1A and 10.1B, including applicable notice and cure periods, the following remedies shall be available to County:

- A. County may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified.
- B. County may terminate this Agreement, effective upon the date specified in the notice of termination. For events enumerated in subsection 10.1A, such date shall be not less than fifteen (15) calendar days from said notice. Upon such date, Airline shall be deemed to have no further rights hereunder and County shall have the right to take immediate possession of the Premises.
- C. County may reenter the Premises and may remove all Airline persons and property from same upon the date of reentry specified in County's written notice of reentry to Airline. For events enumerated in subsection 10.1A, reentry shall be not less than fifteen (15) calendar days from the date of notice of reentry. Upon any removal of Airline property by County hereunder, Airline property may be stored at a public warehouse or elsewhere at Airline's sole cost and expense.
- D. County may relet Airline Premises and any improvements thereon, or any part thereof at such rentals, fees, and charges and upon such other terms and conditions as County, in its reasonable discretion, may deem advisable, with the right to make alterations, repairs of improvements on said Airline Premises. In reletting the Airline Premises, County shall seek to mitigate any damages it may suffer as a result of Airline's event of default.
- E. In the event that County relets Airline Premises, rentals, fees, and charges received by County from such reletting shall be applied first to

any cost or expense of County to relet the Premises and thereafter, to any deficiency between the payment of rentals, fees, and charges due and payable pursuant to this Agreement and what the County receives from the new lessee. In no event shall any of the rentals, fees, and charges received by County from such reletting be applied to any rentals, fees, and charges accrued and owed by Airline to the County prior to the reletting of the Airline Premises. Airline shall have no right to or in any rentals, fees, and charges received by County as a result of the reletting of the Airline Premises. Airline shall also pay to County, as soon as ascertained, any reasonable costs and expenses incurred by County in such reletting not covered by the rentals, fees, and charges received from such reletting.

- F. No reentry or reletting of Airline Premises by County shall be construed as an election on County's part to cancel this Agreement unless a written notice of cancellation is given to Airline.
- G. Airline shall pay to County all other costs, incurred by County in the exercise of any remedy in this Article 10, including, but not limited to, reasonable attorney fees, disbursements, court costs, and expert fees.

10.4 Remedies Under Federal Bankruptcy Laws

Neither this Agreement nor any rights or privileges hereunder shall be an asset of Airline in any bankruptcy, insolvency or reorganization proceeding. If County shall not be permitted to terminate this Agreement because of the provisions of the United States Bankruptcy Code, Airline or any trustee for it shall, within fifteen (15) days upon request by County to the Bankruptcy Court, assume or reject this Agreement, provided however, that Airline may not assume this Agreement unless all defaults hereunder shall have been cured, County shall have been compensated for any monetary loss resulting from such default and County shall be provided with adequate assurance of full and timely performance of all provisions, terms and conditions of this Agreement on the part of Airline to be performed.

Notwithstanding the foregoing, upon the filing by or against Airline of any proceeding under federal bankruptcy laws, if Airline has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, the County shall have the right to terminate this Agreement, in addition to other remedies provided under provisions of all Applicable Laws, including but not limited to the United States Bankruptcy Code, as such may be subsequently amended, supplemented, or replaced. Such termination shall be by written notice to Airline within sixty (60) days from the date of Airline's initial filing in bankruptcy court.

10.5 Voluntary Relinquishment of Authorization

- A. Provided no event of default by Airline or its Affiliates exists, Airline may terminate this Agreement thirty (30) calendar days after receipt by County of written notice from Airline stating the cause and date of such termination, if Airline has voluntarily relinquished its rights, certificates, or authorizations necessary under Applicable Laws to operate its air transportation business at the Airport. Such right of termination shall be in addition to any other such right

provided elsewhere herein or by operation of law.

- B. Upon such termination, all provisions of this Agreement shall be terminated, unless otherwise specified. No such termination shall be effective until thirty (30) calendar days have elapsed after receipt by County of written notice from Airline stating the cause of such termination is pursuant to subsection 10.5A, and date of such termination. Airline shall submit to County sufficient proof that such termination is pursuant to subsection 10.5A and of relinquishment of its certificates and authorizations to operate its air transportation business.
- C. In the event Airline regains its status as an air transportation business within one (1) calendar year from the date of its notice to County as stated in subsection 10.5B above, Airline shall be responsible for all rentals, fees and charges for the balance of the term of this Agreement, for all periods of time from the Commencement Date.

ARTICLE XI DEFAULT BY COUNTY

11.1 Events of Default by County

Each of the following events shall constitute an "event of default by County":

- A. County fails after receipt of written notice from Airline to keep, perform or observe any term, covenant or condition herein contained to be kept, performed or observed by County and such failure continues for thirty (30) consecutive days. Notwithstanding the above, if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by County of written demand from Airline to do so, County fails to commence the remedying of such default within said thirty (30) calendar days following such written notice, or having so commenced, shall fail thereafter to continue with diligence the curing thereof. County shall have the burden of proof to demonstrate all of the following: (i) that the default cannot be cured within thirty (30) calendar days; and (ii) that it is proceeding with diligence to cure said default; and (iii) that such default will be cured within a reasonable period.
- B. County closes Airport to flights in general or to the flights of Airline, for reasons other than weather, force majeure or other reasons beyond its control, and fails to reopen Airport to such flights within thirty (30) days from such closure.

11.2 Remedies for County's Defaults

Upon the occurrence of an event of default by County, Airline shall have the right to suspend or terminate this Agreement thirty (30) days after receipt by County of written notice from Airline stating the event of default causing the same and the date upon which such termination is to be effective. Upon termination, all rentals, fees and charges payable by Airline under this Agreement shall end on the termination date.

11.3 Curative Provisions; Payment Under Protest

- A. No such termination shall be effective if such cause shall have been cured or removed during such thirty (30) day period, or in the event such cause is an Event of Default by County under this Agreement and if, by its nature such default cannot be cured within such thirty (30) day period, such termination shall not be effective if County commences to cure or remove such Event of Default within said thirty (30) days and cures or removes the same as promptly as reasonably practicable.
- B. Notwithstanding anything to the contrary in this Agreement, if a dispute shall arise between County and Airline with respect to any obligation or alleged obligation of Airline to make payment, the payment under protest by Airline of the amount claimed by County to be due shall not waive any of the Airline's rights, and if any court or other body having jurisdiction shall determine that all or any part of the protested payment was not due, then County shall immediately reimburse Airline any amount determined as not due.

ARTICLE XII
WAIVER OF RIGHTS; NO REMEDY EXCLUSIVE

12.1 Waiver

Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. County and Airline agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

12.2 No Remedy Exclusive

No remedy herein conferred upon or reserved to the County or Airline is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

ARTICLE XIII
REMOVAL OF AIRLINE PROPERTY FROM THE AIRFIELD

13.1 Upon the expiration of this Agreement or earlier termination as provided for in this Agreement, as provided for herein but no later than thirty (30) days after the occurrence of such events, the Airline agrees remove all aircraft, equipment, machinery, vehicles and other objects ("Property") which Airline or its Affiliates, its agents, employees, permittees or service providers to Airline or its Affiliates, have placed or caused to be placed upon the Airfield.

13.2 In the event Airline fails to remove all Property from the Airfield as required in Section 13.1, County shall have the option to dispose of the Property (excluding aircraft) as follows:

- A. County may remove such Property to a public warehouse or elsewhere at the cost of, and for the account of Airline; or
 - B. County may retain same in its own possession and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale; or
 - C. County may dispose of such Property in any manner permitted by all Applicable Laws. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Airline shall pay such excess to the County upon demand.
- 13.3 The provisions of this Article XIII shall survive the expiration or earlier termination of this Agreement.

ARTICLE XIV
ASSIGNMENT OR ENCUMBRANCE

- 14.1 Airline shall not sublet the Premises or any part thereof or transfer, assign, pledge, or otherwise encumber this Agreement or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise without the prior written consent of the County, which shall not be unreasonably withheld and (any such action being called an "assignment"). Any such action shall be null and void and of no force or effect provided, however, Airline shall have the right, without the County's prior written consent, to assign this Agreement or its rights hereunder to (a) an entity with whom Airline may merge or consolidate, (b) an entity that acquires all or substantially all of the Airline's assets, or (c) a Wholly Owned Affiliate.

ARTICLE XV
INSURANCE: DAMAGE OR DESTRUCTION

- 15.1 Airline Responsibilities County shall not be liable to Airline for damage to Airline's property, improvements and facilities from any cause whatsoever, including, without limitation, any act of negligence of any tenants, occupants or other users of the Airport or any other person unless, and only to the extent, caused by the negligence of County, its agents, servants, contractors, invitees or employees. Airline shall have the right, however, to claim and recover its damages from any third party other than County who may be liable therefore.

ARTICLE XVI
INDEMNIFICATION: LIABILITY INSURANCE

- 16.1 Indemnification. Airline shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend County, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Airline, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities,

expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against County by reason of any such claim, cause of action, or demand, Airline shall, upon written notice from County, resist and defend such lawsuit or proceeding by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend County. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Director of Aviation and the County Attorney, any sums due Airline under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County

- 16.2 In order to insure the indemnification obligation contained above, Airline shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages as are provided for in this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured. Such required insurance coverage's may be modified from time to time as agreed to by the parties.
- A. Airline shall furnish to the Director of Aviation Certificates of Insurance evidencing the insurance coverages required hereunder. The required Certificate of Insurance shall name the types, terms and limits of liability provided hereunder.
 - B. Coverage is not to cease and is to remain in force (subject to cancellation notice) during the term of this Agreement. The Airline shall use commercially reasonable efforts to have all policies endorsed to provide County with at least thirty (30) days notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the termination of this Agreement, renewal certificates shall be issued within a reasonable time upon renewal.
 - C. Subrogation. Notwithstanding anything to the contrary herein, Airline waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by insurance pursuant to this Article XVI. Airline shall obtain from its insurers, if possible, a waiver of any subrogation the insurer may have against County in connection with any loss or damage covered by Airline's insurance.
 - D. Any insurance coverage that is written on a claims-made basis must remain in force for two (2) years after the termination of this Agreement.
 - E. Compliance with the County's insurance requirements shall not relieve the Airline of its liability and obligations under this Article or under any other provision of this Agreement.
 - F. The amounts and types of insurance shall conform to the following minimum requirements with policies, forms and endorsements that are comparable to Insurance Service Office (ISO) requirements. Notwithstanding the foregoing, at a minimum, the wording of all policies, forms and endorsements must be reasonably acceptable to County.

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

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

2. Liability Insurance shall be maintained by Airline for the term of this Agreement. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and completed Operations Coverage and shall include Explosion (XCU), Collapse, Liquor Liability, Terrorism or War Risk (to the extent available from, or subsidized by, the federal government.) Coverage shall be applicable to the operation of all Airline's mobile and ground equipment at the Airport. The limits of coverage shall not be less than:

Airlines Operating Aircraft with over one hundred (100) seats:

Bodily & Personal Injury & Property Damage Liability	\$200,000,000 Combined Single Limit Each Occurrence & Aggregate
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Airlines Operating Aircraft with seventy-five (75) to one hundred (100) seats:

Bodily & Personal Injury & Property Damage Liability	\$150,000,000 Combined Single Limit Each Occurrence & Aggregate
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Airlines Operating Aircraft with fifty (50) to seventy-four (74) seats:

Bodily & Personal Injury & Property Damage Liability	\$100,000,000 Combined Single Limit Each Occurrence & Aggregate
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Airlines Operating Aircraft with less than fifty (50) seats:

Bodily & Personal Injury & Property Damage Liability	\$50,000,000 Combined Single Limit Each Occurrence & Aggregate
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3. Liability Insurance shall be maintained by Airline during the Term of this Agreement for all owned, non-owned, leased or hired aircraft, including

passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury & Property Damage Liability	\$100,000,000 Combined Single Limit Each Occurrence & Aggregate
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4. Liquor Liability Coverage shall be maintained for any facility of Airline serving alcoholic beverages on the airport in an amount not less than \$1,000,000 per occurrence.
5. Terrorism or War Risk shall be maintained by Airline to the extent available from, or subsidized by, the federal government, in an amount not less than \$50,000,000.
6. Environmental Liability Insurance shall be maintained by the Airline in an amount not less than \$10,000,000 for sudden and accidental pollution, clean up costs or to the extent not prohibited by applicable law. Airline may provide for reasonable limits of self-insurance against environmental liability risks. All amounts paid to County by Airline on account of any self-insurance program shall be deemed insurance proceeds for purposes of this Agreement. To the extent Airline self-insures as to environmental liability, the protections afforded County by Airline shall be the same as if insurance were provided by a third-party insurer and Airline shall have all the obligations and liabilities of a third party insurer hereunder (e.g. obligation to provide a defense).
7. Business Automobile Liability Insurance shall be maintained by Airline during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury & Property Damage Liability	\$5,000,000 Combined Single Limit Each Occurrence & Aggregate
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8. Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability required for the Airport Liability Policy and/or the Business Automobile Policy. The limits of coverage shall not be less than:

Umbrella or Excess Liability Policy:

\$100,000,000 Combined Single Limit
Each Occurrence & Aggregate-Specific
for this Agreement

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

for this Agreement

Primary Liability Limits for the underlying Airport General Liability Coverage:

Bodily & Personal Injury & Property Damage Liability	\$10,000,000 Combined Single Limit Each Occurrence & Aggregate
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- G. Airline shall be responsible to the extent of the requirements of all Applicable Laws relative to Airline or to the County to prevent any unauthorized entry onto any part of the airport operations area of the Airport through Airline's Leased Premises.
- H. Additional Insured. Airline agrees to endorse County as additional insured, to its Liability, Umbrella or Excess Liability to the extent required under this Article XVI. The additional insured shall read "Broward County".

ARTICLE XVII
NOTICES

17.1 Whenever either party desires to give notice to the other, unless otherwise specified, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by overnight courier with receipt acknowledgment, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

County Administrator
Governmental Center
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

with a copy to:

Director of Aviation
Broward County Aviation Department
Fort Lauderdale-Hollywood International Airport
2200 SW 45th Street, Suite101
Dania Beach, FL 33312

FOR AIRLINE:

- 17.2 All notices, approvals and consents required hereunder must be in writing to be effective.

ARTICLE XVIII
ENVIRONMENTAL COMPLIANCE, CONTAINMENT AND REMOVAL

18.1 Environmental Compliance; Containment and Removal

- A. Airline shall provide the Aviation Department upon request, a list of all Hazardous Materials stored, used, generated or disposed of on Airport property by Airline. Airline shall complete the form attached to the TBLA as **Exhibit E** and shall deliver same to the County contemporaneously with its execution of this Agreement. Airline represents that, to the best of its knowledge the matters disclosed on such form will be accurate and complete as of the date of execution of this Agreement. At the request of the Aviation Department (not more than once a year) the Airline shall provide an accurate and complete update as to the matters set forth in such form.
- B. Airline agrees to comply with all Applicable Laws, including but not limited to any Environmental Laws and Development Order covering the Airport, issued pursuant to Chapter 380, Florida Statutes, including without limitation those addressing the following, if applicable to the Airline:
1. Proper use, storage, treatment and disposal of Hazardous Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of Hazardous Materials.
 2. Proper use, disposal and treatment of stormwater runoff, including the construction and installation of adequate pre-treatment devices or mechanisms, if required by any Applicable Laws. The Airline shall have in place, and make available to the Aviation Department for review, all required environmental licenses and documents including, but not limited to, if applicable, a site specific Stormwater Pollution Prevention Plan, and a Spill Prevention and Countermeasures Plan.
 3. Adequate inspection, licensing, insurance, and registration of existing and future storage tanks, storage systems, and ancillary facilities to meet all requirements of all Applicable Laws, including the installation and operation of adequate monitoring devices and leak detection systems.
 4. Adequate facilities for management and, as necessary, pretreatment of Hazardous Materials and the proper disposal thereof.
 5. Compliance with reporting requirements of Title III of the Superfund Amendment and Chapter 27 of the Broward County Code of Ordinances, as applicable and as such laws may be amended from time to time.

- C. The Release of any Hazardous Materials by Airline, its Affiliate, or Airline's Parties, at the Premises occupied by Airline or its Affiliates or any other Airport property, whether caused by the Airline its Affiliates or any officers, employees, contractors, subcontractors or agents of Airline, or its Affiliates, that is in an amount that is in violation of any Applicable Laws, whether committed prior to or subsequent to the date of execution of this Agreement, shall be, at the Airline's expense, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of all Applicable Laws. If Airline does not take action immediately to have such Hazardous Materials contained, removed and abated, the County or any of its agencies may undertake the removal of the Hazardous Materials; however, any such action by the County or any of its agencies shall not relieve the Airline of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either the Airline or the County to contain or remove Hazardous Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release. As used in this Agreement, "Airline's operations" and "Airline's actions" and words of similar import, shall include all actions and inaction by Airline, by its sublessees, or by any of their officers, employees, contractors, subcontractors, invitees, or agents occurring at the Premises or at other Airport property and all actions and inactions of any other person entering upon or using the Premises. Notwithstanding the foregoing, Airline shall not be liable for the presence of any Hazardous Materials at the Premises or the Airport caused by the County or other persons or entities, not an Affiliate, or one of Airline's Parties.
- D. Airline shall provide the Aviation Department with notice of Releases of Hazardous Materials occurring at any area used by Airline, its Affiliates, or Airline's Parties due to Airline's or its Affiliates or Airline's Parties operations at the Airport, which Release was caused by Airline or its Affiliates, or Airline Parties, which notices shall be provided in accordance with the requirements of the Aviation Department's policies and procedures manual. Airline shall maintain a log of all such notices and shall also maintain all records required by federal, state, County, and local laws, rules and regulations and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws. Upon request by the Aviation Department, Airline shall make all documentation required by this subsection available for the review of County representatives.
- E. As required by all Applicable Law, Airline shall provide the required federal, state, County and local regulatory agencies with notice any Release of Hazardous Materials on the Premises occupied by Airline or its Affiliates or on the Airport property, which Release was caused by Airline, its Affiliates, or Airline's Parties. Airline shall further provide the Aviation Department and the County Department of Environmental Protection and Growth Management (or successor agency) with written notice within three (3) business days following commencement of same, of the measures to remediate and or monitor any Release in full compliance with all Applicable Laws. Airline shall have an updated contingency plan (or comparable document) in effect which provide minimum standards and procedures for storage of regulated Hazardous Materials and other Hazardous

Materials, prevention and containment of spills and Releases, and transfer and disposal of regulated Hazardous Materials and other Hazardous Materials. The contingency plan shall describe design features, response actions and procedures to be followed in case of releases or other accidents involving Hazardous Materials.

- F. The Aviation Department, upon reasonable written notice to Airline, shall have the right to inspect all documents relating in any way to the Release of any Hazardous Materials at the Airport, the environmental condition of the Premises occupied by Airline or its Affiliates, any curative, remediation, or monitoring efforts on any Airport property by Airline, its Affiliates, or Airline's Parties and any documents required to be maintained under all Applicable Laws including but not limited to any development order issued to the County pertaining to the Airport, pursuant to Chapter 380, Florida Statutes, including, but not limited to, manifests evidencing proper transportation and disposal of Hazardous Materials, environmental site assessments, and sampling and test results. Airline agrees to allow inspection of the Premises occupied by Airline, or its Affiliates, by appropriate federal, state, County and local agency personnel in accordance with all Applicable Laws, and as required by any development order issued to the County pertaining to the Airport, pursuant to Chapter 380, Florida Statutes.
- G. If the County, pursuant to subsection 18.1C arranges for the removal of any Hazardous Materials on the Premises or other Airport Property used or occupied by Airline, its Affiliates, or Airline's Parties, that were caused Airline, its Affiliates, or Airline's Parties, all costs of such removal incurred by the County shall be paid by Airline to the County within ten sixty (60) calendar days of County's written demand, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.
- H. Nothing herein shall relieve Airline of its general duty to cooperate with the County in ascertaining the source and, containing, removing and abating any Hazardous Materials and Releases. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Airline, and the federal, state, local and other County agencies, and their employees, contractors, and agents, in accordance with all Applicable Laws, shall have the right to enter the Premises occupied by Airline or its Affiliates for the purposes of the foregoing activities and conducting such environmental assessments (testing or sampling), inspections and audits as it deems appropriate. Any such entering of the Premises occupied by Airline or its Affiliates, by County, shall be, if possible, without unreasonable interference with Airline's operations on the Premises and at reasonable times.
- I. If any assessment or inspection undertaken by County, state or federal agencies, indicates that further actions should be conducted, then the County shall have the right to have such further actions conducted at the Airline's expense. Airline shall reimburse to the County the cost of such assessments and inspections within sixty (60) calendar days following written demand for payment, with interest at the rate of eighteen percent (18%) per annum thereafter accruing. Airline shall have the right to split any soil or water samples obtained by the County.

- J. In the event County shall arrange for the removal of Hazardous Materials on the Premises occupied by Airline that are not the responsibility of the Airline to correct, County shall use reasonable efforts to not disrupt Airline's business, however, in no event shall Airline be entitled to any abatement of rent or any amount on account of lost profits, lost rentals, or other damages as a result of County's clean-up activities.
- K. All flammable liquids that are kept or stored at the Premises must at all times be handled, stored, used and dispensed in accordance with all Applicable Laws and other requirements, as same may be amended, including without limitation any rules, regulations or minimum standards that are established by the Aviation Department for operations of Airport tenants.
- L. The provisions of this section shall survive the expiration or other termination of this Agreement.

ARTICLE XIX
RULES AND REGULATIONS

- 19.1 Airline agrees to observe and obey all rules and regulations of the Airport governing the safe conduct on and operation, maintenance and use of Airport, provided that such rules and regulations shall be furnished in writing to Airline. Aviation Department agrees that any rules and regulations so promulgated and as applied to Airline shall be reasonable and shall not be inconsistent with any constitution, law, rule or regulation of the State of Florida or the United States of America or any agency thereof having jurisdiction of the Airport System, nor in conflict with the terms, provisions, rights and privileges granted hereunder. Aviation Department further agrees to provide Airline with notice and a reasonable opportunity to comment prior to the adoption of any new or amended rules and regulations of the Airport.

ARTICLE XX
HEADINGS

- 20.1 All article and paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provision of this Agreement.

ARTICLE XXI
CONSTRUCTION AND SAVINGS CLAUSES

- 21.1 Severance In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or Airline elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.
- 21.2 Airline covenants that whenever it has the right under this Agreement to disapprove a Capital Expenditure, it will do so under prudent judgment and sound management policies.

- 21.3 This Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

ARTICLE XXII
GOVERNMENT INCLUSION

- 22.1 This Agreement shall be subordinate to the provisions of any existing or future agreements between County and the United States government relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds, the transfer of federal rights or property to the County for Airport purposes, or the expenditure of federal funds for the improvements or development of Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other civil airports receiving federal funds. County agrees to give Airline written notice in advance of the execution of such agreements of any provisions which will modify the terms of this Agreement. This Agreement is subject and subordinate to the terms and conditions of the instruments and documents under which the County acquired the Airport from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in such instruments and documents and any existing or subsequent amendments thereto.

- A. Airline, for itself, its successors in interest and assigns, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Airline Premises; (2) in the construction of any improvements on, over, or under the Airline Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) Airline will use the Airline Premises in compliance with all other requirements imposed by or pursuant to 14 CFR 152 and Title VI of the Civil Rights Act of 1964, and as said Title and Regulations may be amended. Airline shall comply with laws of the State of Florida prohibiting discrimination on the basis of sex, religion, age or physical handicap. Should the Airline authorize another person, with County's prior written consent, to provide services or benefits upon the Airline Premises, Airline shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this section. Airline shall furnish a copy of such agreement to County.
- B. County may from time to time be required by the United States government, or its agencies to adopt additional or amended provisions including nondiscrimination provisions, concerning the use and operation of Airport, and Airline agrees that it will adopt any such requirements as a part of this Agreement.
- C. Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement are "non-

exclusive" and County reserves the right to grant similar privileges to other Air Carriers on other parts of Airport.

- D. Airline shall comply with all applicable regulations of the FAA and the TSA relating to Airport security and shall control the Airline Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations of Airport.
- E. County reserves unto itself, its successors, and assigns for the use and benefit or the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises, for navigation or flight in the said airspace for landing on, taking off from or operating on Airport.

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

22.3 Federal Aviation Act, Section 308 Nothing herein contained shall be deemed to grant the Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in Title 49 U.S.C. Section 40103, et. seq., for the conduct of any activity on the Airport. It is expressly understood and agreed that the privileges granted under this Agreement are non-exclusive and the County reserves the right to grant similar privileges to another Airline or other users of the Airport facilities.

22.4 Right to Amend In the event that the United States Government or its departments or agencies requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Airline agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required (collectively, an "amendment"). Notwithstanding the foregoing, in the event any such amendment would unreasonably interfere with the business operations of Airline, then Airline may refuse to consent to such amendment, provided that Airline must give immediate notice to the County of any such refusal to consent and such notice must state with specificity the reasons for any such refusal. The County shall have the right to immediately terminate this Agreement upon the failure of Airline to consent to any such amendment.

22.5 Development and Expansion of Airport It is mutually agreed that County shall have the right to develop, maintain, and operate the Airport as it deems advisable and desirable, in accordance with such appropriate governmental authority and regulation as may be applicable, and that County shall have the right to make such subsequent agreements with the Federal Government as may be necessary or advisable in connection with Federal financing of Airport improvements, alterations, or modifications. Airline acknowledges that County is seeking federal, state, and local approvals for the expansion of the Airport.

22.6 Police/Regulatory Powers County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the premises, any improvements thereon, or any

operations at the premises. Nothing in this Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

ARTICLE XXIII
SPECIAL PROVISIONS

23.1 Aviation Regulations

Airline agrees to comply with all applicable federal rules, regulations and requirements, in the course of their operations, as may be promulgated from time to time. Said rules, regulations and requirements shall include, but not be limited to, the Federal Department of Transportation, the Federal Aviation Administration (FAA), the Federal Department of Homeland Security/Transportation Security Administration (TSA) and US Customs and Border Patrol. Airline shall comply with such rules, regulations and requirements of the County and the Aviation Department, including the Airport Security Program, as may reasonably be prescribed and Airline shall take such steps as may be necessary to ensure that their officers, employees, sublessees, contractors, invitees, agents, and Affiliates comply with all applicable federal, County and Aviation Department rules, regulations and requirements. If as a result of the acts or omissions of Airline, its officers, employees, sublessees, contractors, invitees, agents or Affiliates, the County incurs any fines or penalties imposed by any governmental agency as a result of the action(s) or inaction(s) of the Airline, or its officers, employees, sublessees, contractors, invitees, agents, or Affiliates, or any cost or expense in enforcing any rules, regulations or requirements of any governmental agency, the Airline agrees to reimburse the County for all such fines, penalties, costs and expenses, including the cost of administrative proceedings, court costs and attorney's fees. Airline further agrees to cure all deficiencies, violations and noncompliance as may be determined by the Aviation Department or the United States Department of Transportation, or any other governmental agency with jurisdiction. In the event Airline fails to remedy any such deficiency, violation or noncompliance to the satisfaction of the Aviation Department or the violating agency, as applicable, the County may cure any deficiency, violation or noncompliance at the sole cost and expense of Airline, and Airline shall remit such amounts to County within thirty (30) days of the date of invoice received from the Aviation Department.

23.2 Airline shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Airline shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Airline shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

A. Airlines decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender,

sexual orientation (Broward County Code, Chapter 16 1/2), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

B. Airline shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16 1/2) in performing any services pursuant to this Agreement.

23.3 Amendments Except as may be specifically provided herein, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board of Commissioners and all Signatory Airlines.

23.4 Prior Negotiations This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

23.5 Termination of Prior Agreements on the Commencement Date From and after the Commencement Date, this Agreement shall supersede and replace all Prior Agreements between Airline and County and any amendments, addendums, and renewals thereof. From and after the Commencement Date, the provisions of all of the Prior Agreements shall terminate and no longer be of any force or effect except for obligations and liabilities that accrued prior to the Commencement Date of this Agreement, and for provisions of the Prior Agreements that by their express terms survive the termination thereof.

23.6 Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, AIRLINE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.** If a party fails to withdraw a request for a jury trial in a lawsuit arising out of this agreement after written notice by the other party of violation of this section, the party making the request for jury trial shall be liable for the reasonable attorney's fees and costs of the other party incurred in contesting the request for jury trial, and such amounts shall be awarded by the court in adjudicating the motion.

23.7 Agent for Service of Process It is expressly understood and agreed that if the Airline is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said state, or is a foreign corporation, then in any such event the Airline does designate the Secretary of State, State of Florida, its agent for the

purpose of service of process in any court action between it and the County arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the state of Florida for service upon a non-resident, who has designated the Secretary of state as agent for service. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Airline may be personally served with such process out of this state by certified mailing to the Airline at the address set forth herein. Any such service out of this state shall constitute valid service upon the Airline as of the date of mailing. It is further expressly agreed that the Airline is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

- 23.8 Successors and Assigns Bound This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.
- 23.9 Priority of Provisions If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 24 of this Agreement shall prevail and be given effect.
- 23.10 Third Party Beneficiaries Neither Airline nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
- 23.11 Independent Contractor/Relationship of Parties The relationship of County and Airline hereunder is the relationship of lessor or Airline. Services provided by Airline shall be subject to the supervision of Airline and such services shall not be provided by Airline, or its agents as officers, employees, or agents of the County. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partners, joint ventures, or any other similar relationship between the parties hereto.
- 23.12 Incorporation by Reference The truth and accuracy of each Whereas clause set forth above is acknowledged by the parties. The attached **Exhibits A and B** are incorporated into and made a part of this Agreement.
- 23.13 Survival Upon termination or expiration of this Agreement, the parties to this Agreement shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration. Notwithstanding any provision of this Agreement to the contrary, no obligation which accrued but has not been satisfied under any previous agreements between the parties, shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.
- 23.14 All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires.

Terms such as "herein", "hereof", "hereunder", and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section of this Agreement, such reference is to the section as a whole, including all of the subsections and subparagraphs of such section, unless the reference is made to a particular subsection or subparagraph of such section.

- 23.15 Federal Preemption Nothing contained in this Agreement is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713), of any state or local law, ordinance, or the rules and regulations.
- 23.16 Multiple Originals This Agreement may be fully executed in up to five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

ARTICLE XXIV
CONFORMITY OF LEASE

- 24.1 In the event that County enters into an agreement which makes available to any other Scheduled Air Carrier at Airport more favorable terms, rights, licenses or privileges than are available to Airline, then the same shall be concurrently and automatically made available to Airline.

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**AIRLINE-AIRPORT LEASE AND USE AGREEMENT BETWEEN
BROWARD COUNTY AND _____**

IN WITNESS WHEREOF, the parties have made and executed this Airline-Airport Lease and Use Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2015, and _____, signing by and through its authorized representatives.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor or Vice-Mayor
____ day of _____, 2015

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Aviation Office
2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By _____
Tracy Meyer, Esq. (Date)
Risk Insurance and Contracts Manager

By _____
Alexander J. Williams, Jr. (Date)
Assistant County Attorney

AJW/
_____[insert document name]
1/15/2016 [insert date]
#15

**AIRLINE-AIRPORT LEASE AND USE AGREEMENT BETWEEN
BROWARD COUNTY AND _____**

AIRLINE

ATTEST:

Secretary

(CORPORATE SEAL)

WITNESS:

By: _____

Title: _____

___ day of _____, 2015