

AN ORDINANCE **101542**

AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH UNITED PARCEL SERVICE, INC. FOR THEIR RELOCATION FROM THE WEST CARGO FACILITY TO THE EAST CARGO FACILITY FOR 13,048 SQUARE FEET OF GROUND SPACE, 160,912 SQUARE FEET OF APRON AND 50,877 SQUARE FEET OF NON-AOA RAMP SPACE AT SAN ANTONIO INTERNATIONAL AIRPORT FOR A MONTHLY RENTAL OF \$11,732.28 FOR A TERM OF 20 YEARS WITH A MUTUAL 5 YEAR EXTENSION.

* * * * *

WHEREAS, the City is the owner in fee simple of all pieces, parcels or tracts of land situated at San Antonio International Airport, in the City of San Antonio, Bexar County, Texas; and

WHEREAS, United Parcel Service, Inc. (hereinafter, "Lessee") has been a tenant at San Antonio International Airport's West Cargo facility since 1993; and

WHEREAS, City is proceeding with the construction of the New Terminal B, and Lessee is required to relocate its cargo operations to the East Cargo Area; and

WHEREAS, Lessee will construct a new 5,500 square foot cargo facility upon the ground premises; and

WHEREAS, Lessee wishes to enter into a Lease for use of 13,048 square feet of ground space, 160,912 square feet of apron, and 50,877 square feet of non-AOA ramp space; and

WHEREAS, it is deemed to be in the best interest of the City to enter into a twenty (20) year Lease Agreement for said premises with Lessee; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or a designee is authorized to execute a San Antonio International Airport Lease Agreement with United Parcel Service, Inc., a copy of which is attached hereto as Attachment 1 and incorporated by reference herein for all purposes.

SECTION 2. The proceeds of this Lease shall be deposited into Fund 51001000 entitled "Airport Operations & Maintenance Account," Internal Order 233000000004, entitled "Aviation

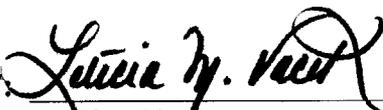
Service Area” and the General Ledger Account 4409040 entitled “Aviation Ground Rental” and 4409010 entitled “Aviation Airline Apron Charges.” The Lease rate for 13,048 square feet of ground space is \$0.25 per square foot per year, producing an annual rental of \$3,262.00 per year. The Lease rate for 160,912 square feet of preferential apron space is \$0.744 per square foot per year, producing an annual rental of \$119,718.53 per year. The Lease rate of non-AOA ramp space is \$0.35 per square foot per year, producing an annual rental of \$17,806.95 per year.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 13th day of October, 2005.


M A Y O R

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for Acting City Attorney

Agenda Voting Results

Name: 10. & 11.

Date: 10/13/05

Time: 11:22:34 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing the execution of a lease agreement with United Parcel Service, Inc. for their relocation from the West Cargo Facility to the East Cargo Facility for 13,048 square feet of ground space, 160,912 square feet of apron and 50,877 square feet of non-AOA ramp space at San Antonio International Airport for a monthly rental of \$11,732.28 for a term of 20 years with a mutual 5 year extension. [Presented by Roland A. Lozano, Interim Director, Aviation; J. Rolando Bono, City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2	Not present			
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

SAN ANTONIO INTERNATIONAL AIRPORT LEASE

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

THIS AGREEMENT, (hereinafter called the "Lease Agreement"), entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting by and through its City Manager, pursuant to Ordinance No. _____ adopted on _____, (hereinafter called "Lessor" or "City"), and **UNITED PARCEL SERVICE, INC.**, an Ohio Corporation, acting by and through its designated officers pursuant to its by-laws or a resolution of its Board of Directors (hereinafter called "Lessee" or "UPS"), **WITNESSETH:**

WHEREAS, Lessee is a current tenant at the San Antonio International Airport (hereinafter "Airport"); and

WHEREAS, Lessee's existing lease, Lease No. 122031 was authorized by Ordinance No. 92814 adopted on November 2, 2000; and

WHEREAS, The term of Lease No. 122031 is due to expire on November 30, 2005, Lessee is currently occupying the Leased Premises and it is necessary to relocate Lessee due to Lessee's needs and relocation due to the pending terminal expansion; and

WHEREAS, it is deemed to be in the best interest of the City to enter into a new Lease Agreement for the Leased Premises with Lessee; and

WHEREAS, in order to effectuate the agreement of the parties as to these matters, it is necessary that this Lease Agreement be approved by Lessor; **NOW THEREFORE:**

Lessor and Lessee for and in consideration of the mutual covenants and promises herein expressed do hereby agree as follows:

1. DESCRIPTION OF PREMISES DEMISED

1.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby demise and lease unto Lessee and Lessee does hereby accept from Lessor: 13,048 square feet of ground area; preferential use of 160,912 square feet of apron space; and, 50,877 square feet of non-AOA ramp area (hereinafter called the "Leased Premises") located at the San Antonio International Airport and more specifically shown on Exhibit 1, 1A, 1B and 1C which is attached hereto and made a part hereof by reference.

2. RENTAL

2.1 Lessee agrees to pay Lessor the following sums, as rental, monthly in advance (without notice or demand, both of which are expressly waived) for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided:

<u>Premises</u>	<u>Sq. Ft.</u>	<u>Annual Rate per Sq. Ft.</u>	<u>Annual Rental</u>	<u>Monthly Rental</u>
Ground	13,048	\$ 0.25	\$ 3,262.00	\$ 271.84
Preferential Apron	160,912	\$0.744	\$119,718.53	\$ 9,976.55
Non-AOA Ramp	50,877	\$ 0.35	\$ 17,806.95	\$ 1,483.92

2.2 Such rentals shall be subject to the adjustments in rental rates contained in Standard Provision 1 hereof.

2.3 All rentals shall be calculated on an annual basis and shall be paid by Lessee to Lessor in advance without invoicing, notice or demand, in equal monthly installments on or before the first day of each calendar month beginning on the Commencement Date and continuing throughout the remainder of the term of this Lease Agreement and any extension(s) hereof. In the event that the term of this Lease Agreement shall commence on a day other than the first day of any calendar month or expire on a day other than the last day of a calendar month, then, and in such event, rental installments will be prorated for the first or last month as the case may be.

2.4 All rentals and payments that become due and payable by the Lessee shall be made to the City of San Antonio, Office of the Aviation Director, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Bexar County, Texas, unless otherwise notified in writing. All rentals and payments unpaid for ten (10) days after the date due shall bear interest at the rate of ten (10) percent per annum commencing on the date after each such payment was due.

2.5 Lessee shall cause its architect to prepare and submit plans for a Building Permit to the City of San Antonio not later than ten (10) days after execution of this Lease. Upon issuance of a Building Permit, Lessee shall thereafter continuously and in good faith pursue construction of its building to completion. Lessee shall commence paying rent upon the earlier of the date the Lessee occupies the new building and/or receives a Certificate of Occupancy but in no event later than 180 days from the commencement of the Lease Agreement.

2.6 Lessee hereunder agrees to participate in Lessor's Automated Access Control System (AACS). Lessee agrees, as a condition of participation in the AACS program, to pay for the AACS units, their installation and, to pay monthly, in advance, without notice or demand, as part of its monthly rent, a service fee of \$50.00 for each set of Matrix units installed. Two (2) sets of Matrix units shall be installed. Such fee may be adjusted by Lessor upon providing thirty (30) days written notice of such adjustment by Lessor to Lessee. Lessee further agrees that, not later than thirty (30) days after written demand by Lessor, Lessee will reimburse Lessor for any costs associated with maintenance, repair, or replacement of the readers, access cards or other equipment associated with the AACS program, to the extent to which such costs are not covered by Lessor's maintenance contract with the AACS Vendor.

2.7 It is the understanding of the parties that all improvements and/or modifications (hereinafter, collectively, "the Improvements") to any building premises will be at the sole cost and expense of Lessee. The Improvements will be completed by Lessee only in accordance with plans and specifications to be developed by Lessee's consulting engineer/architect and approved by the Director, in accordance with Standard Provision 5, or as provided in Article 10, Special Provisions.

2.8 It is the understanding and agreement of the parties that Lease No. 122031 authorized by Ordinance dated November 2, 2000 shall terminate on the day following the day Lessee vacates the Lease Premises of Lease No. 122031 and moves its operation to the above described premises.

3. LEASE TERM AND OPTION

3.1 The primary term of this Lease Agreement shall be twenty (20) years. The Lease shall commence on October 15, 2005 ("Commencement Date") and shall terminate (unless otherwise earlier terminated under the provisions contained herein) at midnight October 14, 2025. The Leased Premises will at all times during the term of the Lease Agreement and any extension be subject to the provisions for recapture and/or earlier termination herein contained. In the event the term of this Lease shall commence on a day other than the first day of any calendar month or expire on a day other than the last day of a calendar month, then, and in such event, rental installments shall be prorated for the first and or last month as the case may be.

3.2 Lessee agrees to construct at Lessee's sole cost, risk and expense substantial improvements to the Leased Premises, in accordance with the plans and specifications to be developed by Lessee's consulting engineer/architect and approved by the Aviation Director in accordance with Standard Provision 5, which approval shall not be unreasonably withheld or delayed.

3.3 It is the understanding and agreement of the Parties that ownership and title to the substantial improvements constructed by Lessee's upon the Lease Premises shall vest in Lessor at the expiration or termination of this Lease, in accordance with Standard Provision 8 at the end of the twenty (20) year primary lease term or upon earlier termination of this Lease Agreement.

3.4 Lessee, at its own expense and risk, agrees to install all electrical, water line and all other utilities necessary to access the main utility conduits and water lines installed by the City, in or adjacent to the Wetmore Road right-of-way. Any and all connections installed by Lessee shall utilize the City's installed conduits only, and will in no way disturb the roadway newly installed by City for the benefit of Lessee. Liability for any damage to this roadway caused as a result of Lessee's installation of its water and utility lines will lie with the Lessee.

3.5 Notwithstanding the primary term set forth above and provided the Lessee is not in default under this Lease, the parties agree that this Lease may be mutually extended by Lessor, acting by and through its Aviation Director, for one (1) additional five (5) year period unless sooner terminated according to the provisions hereof. The parties agree and understand that at the end of the twenty (20) year primary term of this Lease, title to the building existing upon the Lease Premises shall vest in Lessor and at such time building rental for such building premises shall commence.

4. USE(S) OF PREMISES

4.1 The Premises shall be used for the purposes of aircraft, ground equipment, and ground vehicle parking; the loading, unloading and sorting of air cargo; as well as, general uses related to and necessarily incidental to air cargo express operations. Any other use shall require the advance written approval of the Aviation Director.

5. INDEMNIFICATION

5.1 **LESSEE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LESSEE's** activities under this **LEASE**, including any acts or omissions of **LESSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LESSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **LEASE**, all without however, the City waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LESSEE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE's** activities under this **LEASE** and shall see to the investigation and defense of such claim or demand at **LESSEE's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

5.2 It is the **EXPRESS INTENT** of the parties to this **LEASE**, that the **INDEMNITY** provided for in this section (Section 5), is an **INDEMNITY** extended by **LESSEE** to **INDEMNIFY, PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY's OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage or the result of the **CITY's** gross negligence or intentional misconduct. **LESSEE** further **AGREES TO DEFEND, AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

6. INSURANCE

6.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish original Certificates of Insurance to Lessor, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage's, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Lessor shall have no duty to perform under this Lease Agreement until such certificates shall have been delivered to the Lessor, and no officer or employee shall have authority to waive this requirement.

6.2 Lessor reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the Lessor's Risk Manager based upon changes in statutory law or court decisions, but in no instance will Lessor allow modification whereupon Lessor may incur increased risk.

6.3 Lessee's financial integrity is of interest to Lessor, therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by Lessor, Lessee shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at Lessee's sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Lessor, in the following types and amounts:

<u>Type</u>	<u>Amount</u>
(1) Worker's Compensation & Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
(2) Commercial General Liability Aviation Policy with Hangar-keeper's Liability	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000.00 per occurrence or its equivalent with an aggregate of not less than \$5,000,000.00
Endorsements to include coverage for the following:	
(A) Premise/Operations	
*(B) Independent Contractors	
*(C) Personal Injury	
(D) Contractual Liability	
(E) Broad Form Property Damage to Include Fire and Legal Liability	
(F) Products/ Completed Operations	
(3) Property Insurance for physical damage to the Lessee's improvements and betterments to the leased property	Replacement Cost Coverage or Eighty percent (80%) of Actual Cash Value Coverage
(4) Business Automobile Liability (any auto)	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000.00 per occurrence or its equivalent.
(5) Plate Glass Coverage for Leased Premises	Replacement Cost Coverage

- | | | |
|-----|---|---|
| (6) | Above Ground and/or Underground Storage Tank Storage Tank Liability | \$10,000,000.00 per claim. |
| (7) | Aircraft Liability | \$10,000,000.00 per occurrence, combined single limit, written on an occurrence form. |

* If Applicable

6.4 Lessor shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by Lessor, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request buy Lessor, the Lessee shall exercise reasonable efforts to accomplish such changes in policy coverage's, and shall pay the cost thereof.

6.5 Lessee agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- A. Name Lessor and its officers, employees, agents and elected representatives as additional insured (as the interest of each insured may appear), as to all applicable coverage, with the exception of the worker's compensation and employer's liability policy;
- B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where Lessor is an additional insured shown on the policy;
- C. Worker's compensation and employer's liability policy will provide a waiver of subrogation in favor of Lessor.

6.6 Lessee shall notify Lessor in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notice shall be given to the Lessor by Certified Mail at the following addresses:

Aviation Director CITY OF SAN ANTONIO 9800 Airport Blvd. San Antonio, Texas 78216-9990	and	City Clerk's Office CITY OF SAN ANTONIO P.O. Box 839966 City Hall - Second Floor 100 Military Plaza San Antonio, Texas 78283-3966
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6.7 The proceeds for any such insurance, paid on account of fire, explosion or other damage shall be used to defray the cost of repairing, restoring or reconstructing said improvements, as necessary.

6.8 It is expressly understood and agreed that all operations of Lessee under this Lease Agreement between Lessor and Lessee shall be covered by such policies of insurance or self insurance as approved by Lessor's Risk Manager and that all personal property placed in the Leased Premises shall be at the sole risk of Lessee. The procuring of policies of insurance

shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this contract. Lessee's obligations are notwithstanding said policy of insurance, for the full and total amount of and damage, injury or loss caused by or attributable to its activities conducted at or upon the Airport.

7. PERFORMANCE GUARANTEE

7.1 Lessee shall deliver to the Director on or before the execution of this Lease Agreement and shall keep in force throughout the term hereof either an irrevocable letter of credit in favor of Lessor drawn upon a bank satisfactory to Lessor or a surety bond payable to Lessor. The foregoing shall be in form and content satisfactory to Lessor, shall be conditioned on satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond to be delivered by Lessee to the Director on or before the date of the execution of this Lease Agreement shall be **SEVENTY- ONE-THOUSAND AND 00/100 DOLLARS (\$71,000)**. The amount of the irrevocable letter of credit or surety bond shall be adjusted as necessary so that such amount shall at all times equal at least one-half the total annual rental payable by Lessee to Lessor hereunder.

8. NOTICES

8.1 For purposes of this Lease, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered, certified mail or UPS Next Day Air, postage prepaid, to the addresses set forth below:

CITY

San Antonio International Airport
Aviation Department
9800 Airport Blvd
San Antonio, TX 78216

LESSEE

Airport Properties Manager.
United Parcel Service
1400 N. Hurstbourne Parkway
Louisville, KY 40223

9. STANDARD PROVISIONS AND COVENANTS

9.1 The Standard Provisions and Covenants set forth in **Exhibit 4**, attached hereto, are incorporated herein and made a part hereof except as changed below:

A. Standard Provision 9.2 is amended by deleting the words "to a condition reasonably acceptable to Lessor" and adding the following phrase after the word Premises in line 10 "pursuant to the applicable statutes, laws, rules or regulations governing fuel storage facilities".

10. SPECIAL PROVISIONS

10.1 Lessee understands, recognizes and agrees that Lessee takes the Leased Premises on an "As Is" basis. Further, the Lessor is not responsible for any improvements and buildings, ground, concrete, asphalt, or any other pavement or improvement thereupon.

10.2 Lessee shall have the right, for a period of ninety (90) days from the effective date of this Lease to conduct soil tests on the Leased Premises for the purpose of determining that the

environmental and geologic condition of the Leased Premises are acceptable for Lessee's use. In the event Lessee determines, in its sole discretion, that the environmental or geologic condition of the Leased Premises are not acceptable to Lessee, then Lessee shall have the right to terminate this Lease by sending written notice to Lessor on or prior to the expiration of ninety (90) days from the effective date of this Lease.

10.3 It is the express agreement of the parties that Lessee at Lessee's sole cost and expense will obtain and deliver to the Director any required Certificates of Occupancy within 180 days after the Commencement Date of this Lease Agreement and any required building permits prior to any construction, unless otherwise agreed to in writing by the Aviation Director.

10.4 The parties hereto agree and recognize that the ground and apron space for the Air Cargo East is in high demand and that Lessor must retain the right to allot such space in a manner necessary to maximize the usage and allotment of such space. In the event that Lessee shall request and Lessor acting by and through its Aviation Director in his sole discretion shall agree, ground and/or cargo ramp space may be added to the Leased Premises. In the event Lessor shall agree to add additional ground and/or cargo ramp space to the Leased Premises, a writing shall be executed to add such premises at the prevailing rental rate for such premises. The parties agree that Lessor acting by and through its Aviation Director and at its sole discretion may recapture any such added ground and/or cargo ramp space at any time during the term of this Lease Agreement. Lessor shall provide to Lessee at least thirty (30) days advance written notice of the need for such recapture. Should any recapture of the added Leased Premises occur as set forth in this paragraph, then, and in such event, a writing shall be executed by and between Lessee and Lessor, acting by and through the Aviation Director, to reflect the terms and conditions relating thereto. Such writing, upon execution thereof by Lessee and the Director, shall be filed of record with the City Clerk and shall automatically become a part of this Lease Agreement. In the event that Lessee shall not comply with the terms set forth herein before, then, and in such event, Lessor, acting by and through its Aviation Director, shall have the option to terminate this Lease Agreement upon the provision of thirty (30) days written notice to Lessee.

10.5 The parties hereto agree and recognize that the ground and apron space in the Air Cargo East is in high demand and that Lessor must retain the right to allot such space in a manner necessary to maximize the usage and allotment of such space. In the event that Lessee shall request and Lessor acting by and through its Aviation Director or Designee shall agree, and ground and/or cargo ramp space may be deleted from the Leased Premises. In the event Lessor shall agree to delete ground and/or cargo ramp space from the Leased Premises, a writing shall be executed to delete such Leased Premises at the prevailing rate for such premises. The parties agree that Lessor acting by and through its Aviation Director and at its sole discretion may recapture any such added cargo building, warehouse or office space at any time during the term of this Lease Agreement. Lessor shall provide to Lessee at least thirty (30) days advance written notice of the need for such recapture. Should any recapture of the added Leased Premises occur as set forth in this paragraph, then, and in such event, a writing shall be executed by and between Lessee and Lessor, acting by and through the Aviation Director, to reflect the terms and conditions relating thereto. Such writing, upon execution thereof by Lessee and the City, shall be filed of record with the City Clerk and shall automatically become a part of this Lease Agreement. In the event that Lessee shall not comply with the terms set forth hereinbefore, then, and in such event, Lessor, acting by and through its Aviation Director, shall have the option to terminate this Lease Agreement upon the provision of thirty (30) days written notice to Lessee.

10.6 Statistical Data Recording.

10.6.1 It is the understanding and agreement of the parties that Lessee will maintain statistical data regarding transportation by air of persons, property, cargo and mail and for all Revenue and Non-Revenue Landings by the Lessee and/or Lessee's Guest airline(s) (whether scheduled or non-scheduled) that are handled by Lessee or parked upon Lessee's Premises, and provide such data to the Lessor, on or before the 10th day of each month, in the form attached hereto as **Exhibits 2**, which is incorporated herein by reference, or as such Exhibit may be revised or amended in the future. Failure to comply with this requirement shall be an event of default.

10.6.2 Lessee shall also maintain statistical data regarding Monthly Landed Weight and submit such data to the Lessor, within ten (10) days following the end of each month, in the form attached hereto as **Exhibits 3**, which is incorporated herein by reference, or as such Exhibit may be revised or amended in the future. In addition, a copy of this report shall be submitted to the City within fifteen (15) days following the end of the month along with payment of its current landing fee based on the figures reported. Failure to comply with either of these requirements shall be an event of default.

10.6.3 For purposes of such statistical reporting required by Article 10.6 the following definitions shall apply:

- A. "Revenue Landing" shall mean an aircraft landing by airline, transporter or carrier at Airport in conjunction with a flight for which airline, transporter or carrier makes a charge or from which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landing shall not include any landing of an aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.
- B. "Guest Airline" shall mean a provider of air transportation or cargo services which is doing business with Lessee, handled by Lessee, or parks upon Lessee's Premises and which does not have in force a written agreement with the City to operate at the Airport.

10.6.4 The acceptance by City of any Airline payment shall not preclude City from verifying the accuracy of Airline's reports on which Airline's rental, fee and charges are based as provided in this Article and shall not be construed as a waiver of interest penalty due, if any.

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EXECUTED THIS THE _____ day of _____, 2005.

ATTEST:

CITY OF SAN ANTONIO, Lessor

By: City Manager

ATTEST:

UNITED PARCEL SERVICE, INC., Lessee

By: _____

Printed Name: _____

Printed Title: _____

Lessee's Federal Tax
I.D. _____

APPROVED: _____
City Attorney