

AIRLINE-AIRPORT USE AND LEASE AGREEMENT

BY AND BETWEEN

CITY OF SAN ANTONIO

AND

U.S. AIRWAYS, INC.

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
I	Definitions	5
II	Term	10
III	Premises	10
IV	Use of Airport and Related Facilities	12
V	Maintenance and Operation of Airport	17
VI	Rentals, Fees and Charges	18
VII	Adjustment of rates for Rentals, Fees and Charges	22
VIII	Airport Improvements	24
IX	Damage or Destruction	28
X	Indemnification and Insurance	30
XI	Cancellation by City: Events of Default by Airline	34
XII	Cancellation by Airline: Events of Default by City	36
XIII	Surrender of Airline Premises	37
XIV	Assignment and Subletting	38
XV	Access	40
XVI	Subordination and Savings Clause	42
XVII	Government Inclusion	42
XVIII	Miscellaneous Provisions	44
XIX	Commencement Provisions and Effective Date	50

LIST OF EXHIBITS

- EXHIBIT A** – **Airport Boundaries**
- EXHIBIT B** – **Description of Airline Premises**
- EXHIBIT C** – **Summary of Terminal Areas**
- EXHIBIT D** – **Responsibility of City and Airline for Maintenance and Operation of Airport**
- EXHIBIT E** – **Monthly Statistical Report**
- EXHIBIT F** – **Monthly Landed Weight/Fee Report**
- EXHIBIT G** – **Adjustment of Rates for Rentals, Fees and Charges**
- EXHIBIT H** – **Estimated Five Year Capital Improvement Plan**
- EXHIBIT I** – **Affiliates of Airline**
- EXHIBIT J** – **Self – Insurance Requirements for Airline**

THIS AGREEMENT is entered into by and between the City of San Antonio, a Texas municipal corporation, (hereinafter referred to as "**CITY**") being the duly and lawfully constituted owner and operator of the San Antonio International Airport, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____ and U.S. Airways, Inc., a corporation organized and existing under the laws of the State of Delaware acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors, (hereinafter referred to as "**AIRLINE**"); and

WHEREAS, the City has constructed, developed and equipped the Airport, as shown on Exhibit "A" hereof, and has adopted certain Ordinances dated June 19, 1980, May 19, 1983, and March 28, 1991, as such may be amended or supplemented from time-to-time (together, the "Bond Ordinance"); and

WHEREAS, the Bond Ordinance provides, among other things, that the City will at all times fix, maintain, enforce, charge, and collect rates, fees, charges, and amounts for the use, occupancy, services, facilities and operation of the Airport System which will produce in each Fiscal Year Gross Revenues at least sufficient (i) to pay all Operation and Maintenance Expenses during each Fiscal Year and (ii) to provide an amount equal to 1.25 times the principal and interest requirements during each Fiscal Year on all then outstanding Bonds Similarly Secured, all paid as set forth in the Bond Ordinances; and

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

WHEREAS, Airline is a corporation engaged in the business of air transportation by aircraft for the carriage of persons, property, and/or mail; and

WHEREAS, Airline desires to use certain premises and facilities, and to exercise certain rights and privileges at San Antonio International Airport in connection with the operation of its Air Transportation System, and City is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties hereto is to enter into an agreement which will more definitively specify the rights and obligations of the parties with respect to the operation of the Airport by the City and the use and occupancy of the Airport by the Signatory Airlines, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, the City and Airline for and in consideration of the covenants and mutual agreements hereinafter contained do hereby covenant and agree as follows:

-----*space below intentionally left blank*-----

ARTICLE I.
DEFINITIONS

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

- 1.1 Additional Bonds -- shall mean the additional parity revenue Bonds which the City reserves the right to issue in the future as provided in the Bond Ordinance and obligations issued to refund any of the foregoing on a parity with the Bonds Similarly Secured.
- 1.2 Affiliate or Affiliated Airline -- shall mean (i) any wholly owned-subsiidiary or majority-owned Airline; or (ii) any regional Airline operating under the name of the Airline; in any case only if such airline is named on Exhibit "T", as may be revised from time to time. Affiliated Airlines may be added or deleted from time to time by agreement of the Airline and the City and will be designated on a revised Exhibit "T". Airline agrees to notify the City of any airlines affiliated with Airline that will be operating at the Airport prior to commencement of such service.
- 1.3 Agreement -- shall mean this Airline-Airport Use and Lease Agreement between the City and Airline, as the same may be amended or supplemented from time-to-time.
- 1.4 Air Transportation System -- shall mean that system operated by Airline for the commercial transportation of persons, property and/or mail by air.
- 1.5 Aircraft Parking Apron -- shall mean that portion of the Ramp Area immediately adjacent to the Terminals that is used for the parking of aircraft and support vehicles and the loading and unloading of passengers and cargo.
- 1.6 Airline Fee Refund Account -- shall mean that account established in Paragraph 6.6.A. of this Agreement.
- 1.7 Airline Premises -- shall mean Exclusively Leased Premises, Preferential Use Premises and Joint Use Premises as hereinafter defined.
- 1.8 Airline-Airport Affairs Committee (AAAC) -- shall mean a Committee composed of a representative of each Signatory Airline to consult and coordinate with the City in matters related to the planning, promotion, development, operation and financing of the Airport System.
- 1.9 Airport -- shall mean the San Antonio International Airport owned and operated by the City of San Antonio, the boundaries of which are more particularly shown on Exhibit "A" attached hereto.
- 1.10 Airport System -- shall mean and include the San Antonio International Airport and Stinson Municipal Airport, as each now exists, and all land, buildings, structures,

equipment and facilities pertaining thereto, together with all future improvements, extensions, enlargements, and additions thereto, and replacements thereof, and all other airport facilities of the City acquired, constructed, leased or operated in the future with funds from any source.

- 1.11** Bond Fund -- shall mean the fund of such name created by the Bond Ordinance.
- 1.12** Bond Ordinance -- shall mean (i) Ordinance No. 52307, dated June 19, 1980, authorizing the City of San Antonio Airport System Revenue Bonds Series 1980, (ii) Ordinance No. 56972, dated May 19, 1983, authorizing the City of San Antonio, Texas Airport System Improvement and Refunding Revenue Bonds, Series 1983, and (iii) Ordinance No. 73387, dated March 28, 1991, authorizing the City of San Antonio, Texas Airport System Revenue Refunding Bonds, Series 1993, as such Ordinances may from time-to-time be amended or supplemented pursuant to the terms of said Ordinances, and any ordinance authorizing the issuance of obligations to refund all outstanding Bonds and Additional Bonds as defined in such Ordinances.
- 1.13** Bonds -- shall mean the bonds authorized by the Bond Ordinance and issued by the City and all Additional Bonds and other obligations issued as permitted by the Bond Ordinance. "Bonds" shall not include Special Facility Revenue Bonds.
- 1.14** Bonds Similarly Secured -- shall mean the Previously Issued Bonds, the Bonds and any Additional Bonds.
- 1.15** Capital Improvement Fund -- shall mean that fund established in Section 19 of the Bond Ordinance or any similar successor fund established by the City for purposes of the Agreement.
- 1.16** Commencement Date -- shall mean that date established in Paragraph 19.2.A.
- 1.17** Cost of Capital -- shall mean the (a) for capital expenditures financed with bonds, the effective interest rate (the "true interest cost" or "TIC") on the bonds used to finance the particular capital expenditure and (b) for capital expenditures financed with other City funds, the current Revenue Bond Index of 22+ year, "A" rated tax exempt bonds published daily in the Wall Street Journal (or successor publication thereto), as of the date the capital expenditure is placed in service. However, for the purpose of developing annual rates and charges, the rate index nearest to the date of rate setting will be used for a capital expenditure planned to be placed into service during the next year.
- 1.18** Debt Service Requirement -- shall mean the total, as of any particular date of computation for any particular period or year, of the (a) scheduled amounts required during such period or year for the payment of all principal of and interest on the Bonds, during such period or fiscal year (b) 25 percent of the amount determined for "(a)" preceding; and (c) other amounts required by the Bond Ordinance.

- 1.19 Director -- shall mean the Director or Acting Director of Aviation as from time-to-time appointed by the City Manager and shall include such person or persons as may from time-to-time be authorized in writing by the City Manager or by the Director to act for him with respect to any or all matters pertaining to this Agreement.
- 1.20 Effective Date -- shall mean the date specified in Article XIX.
- 1.21 Enplaned Passengers -- shall mean all originating and on-line transfer and off-line transfer passengers boarded at the Airport (excluding Non-Revenue Passengers) including those of any Affiliate(s) and any passengers boarded by any air transportation company ground handled or otherwise accommodated by Airline, if such affiliate or accommodated or handled air transportation company does not have its own agreement with the City requiring the direct submission of such data.
- 1.22 Exclusively Leased Premises -- shall mean Terminal space leased to Airline, as shown on Exhibit "C" attached hereto, as such may be amended from time-to-time.
- 1.23 Fiscal Year -- shall mean the then current annual accounting period of the City for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve consecutive calendar months ending with the last day of September of any year.
- 1.24 Gate-Position -- shall mean Airline's passenger gate(s) including Airline's preferential Aircraft Parking Apron and the Preferential Use Holdroom, passenger loading bridge, and appurtenant furnishings in and about the Terminal that are reasonably necessary for the use thereof.
- 1.25 Gross Revenues -- shall mean all of the revenues and income of every nature and from whatever source derived by the City (but excluding grants and donations for capital purposes) from the operation and/or ownership of the Airport System, including the investment income from the investment or deposit of money in each Fund created by the Bond Ordinance (excluding the Construction Fund); provided, however, that if the net rent (excluding ground rent) from any lease executed in the future is pledged to the payment of principal, interest, reserve, or other requirements in connection with revenue bonds issued by the City to provide special facilities for the Airport System for the lessee (or in connection with bonds issued to refund said revenue bonds) the amount of such net rent so pledged and actually used to pay such requirements shall not constitute or be considered as Gross Revenues, but all ground rent, and any net rent in excess of the amounts so pledged and used, shall be deposited in the Revenue Fund created in the Bond Ordinance. Without limiting the generality of the foregoing, the term "Gross Revenues" shall include all landing fees and charges, ground rentals, space rentals in buildings and all charges made to concessionaires, and all revenues of any nature derived from contracts or use agreements with airlines and other users of the Airport System and its facilities; provided, however, that when the Series 1980 Bonds and Series 1983 Bonds are no longer outstanding, the term Gross Revenues shall not include any passenger facility

charges described substantially in the manner provided in Section 1113 of the Federal Aviation Act of 1958, as amended, or the rules and regulations promulgated thereby, or any other similar charges that may be imposed pursuant to federal law.

- 1.26 Guest Airline -- shall mean a provider of commercial air transportation services which does not have in force a written agreement with the City to operate at the Airport.
- 1.27 Host Airline -- shall mean a Signatory Airline that accommodates an Affiliate within its Airline Premises as described in Section 4.1.Q.
- 1.28 Joint Use Premises -- shall mean those Terminal areas assigned to two or more Scheduled Air Carriers as shown on Exhibit "C" attached hereto.
- 1.29 Landing Area -- shall mean those portions of the Airport (exclusive of buildings, hangars and aircraft storage areas) provided for the 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 in connection therewith.
- 1.30 Maximum Gross Landed Weight -- shall mean the maximum gross certificated landing weight in one thousand pound units at which each aircraft operated by Airline is certified by the FAA.
- 1.31 Non-Revenue Landing -- shall mean any aircraft landing other than a Revenue Landing.
- 1.32 Non-Revenue Passenger -- shall mean an airline employee or an eligible family member of an airline employee traveling on an airline pass.
- 1.33 Non-Signatory Airline -- shall mean an airline which is not a party to the Agreement.
- 1.34 Operation and Maintenance Expenses -- shall mean the reasonable and necessary current expenses of the City, as determined by City, paid or accrued in administering, operating, maintaining and repairing the Airport System. Without limiting the generality of the foregoing, the term "Operation and Maintenance Expenses" shall include all costs directly related to the Airport System, that is; (1) collecting Gross Revenues and making any refunds therefrom lawfully due others; (2) engineering, audit reports, legal and other overhead expenses directly related to its administration, operation, maintenance and repair; (3) salaries wages and other compensation of officers and employees and payments to pension, retirement, health and hospitalization funds and other insurance, including self-insurance for the foregoing (which shall not exceed a level comparable to airports of a similar size and character); (4) costs of routine repairs, replacements, renewals and alterations not constituting a capital improvement, occurring in the usual course of business; (5) utility services; (6) expenses of general administrative overhead of the City allocable to the Airport System; (7) equipment, materials and supplies used in the ordinary course of business not constituting a capital improvement including ordinary and

current rentals of equipment or other property; (8) fidelity bonds, or a properly allocable share of the premium of any blanket bond, pertaining to the Airport System or Gross Revenues or any other money held under the Bond Ordinance or required by the Bond Ordinance to be held or deposited under the Bond Ordinance; and (9) costs of carrying out the provisions of the Bond Ordinance, including paying agent's fees and expenses; costs of insurance required by the Bond Ordinance, or a properly allocable share of any premium of any blanket policy pertaining to the Airport System or Gross Revenues, and costs of recording, mailing and publication.

- 1.35 Preferential Use Premises -- shall mean the Aircraft Parking Apron, and holdroom(s) assigned to Airline as more particularly delineated on Exhibit "C" attached hereto, and to which Airline shall have preferential use, defined herein as the unrestricted, higher and continuous priority over all other users subject to the provisions of Article XV herein.
- 1.36 Previously Issued Bonds -- shall mean (i) the currently outstanding and unpaid revenue bonds of the City payable from and equally and ratably secured solely by a first lien on and pledge of the Gross Revenues of the Airport System on a parity with the City of San Antonio, Texas Airport System Revenue Refunding Bonds, Series 1993 (the "Series 1993 Bonds"), identified as; (1) City of San Antonio Airport System Revenue Bonds, Series 1980, dated July 1, 1980, and originally issued in the principal amount of \$25,000,000 (the "Series 1980 Bonds"); (2) City of San Antonio Airport System Improvement and Refunding Revenue Bonds, Series 1983, dated May 1, 1983, and originally issued in the principal amount of \$76,040,000 (the "Series 1983 Bonds") and (3) any Additional Bonds sold and delivered by the City prior to the date of delivery of the Series 1993 Bonds; (ii) obligations hereafter issued to refund any of the foregoing on a parity with the Previously Issued Bonds.
- 1.37 Ramp Area -- shall mean the aircraft parking and maneuvering areas adjacent to Terminal.
- 1.38 Requesting Airline -- shall mean a Scheduled Air Carrier desiring to provide new or expanded commercial passenger air transportation service to and from Airport but unable to obtain from City Aircraft Parking Apron and/or Terminal space.
- 1.39 Revenue Landing -- shall mean an aircraft landing by Airline at the Airport in conjunction with a flight for which Airline makes a charge or from which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landing shall not include any landing of an aircraft which, after having taken off from the 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.
- 1.40 Scheduled Air Carrier -- shall mean an air transportation company performing or desiring to perform, pursuant to published schedules, commercial air transportation

services over specified routes to and from Airport, and holding any necessary authority to provide such transportation from the appropriate federal or state agencies.

- 1.41 Signatory Airline -- shall mean a Scheduled Air Carrier which has an agreement with City substantially similar to this Agreement that includes the lease of Exclusively Leased Premises and Preferential Use Premises directly from the City.
- 1.42 Special Purpose Facilities -- shall mean any capital improvements or facilities acquired or constructed by City from funds other than Gross Revenues or obligations payable from Gross Revenues and located or to be located on any property included under the definition of the Airport System.
- 1.43 Terminals -- shall mean the airline terminal buildings owned and operated by the City at the Airport as shown on Exhibit "A" hereof, as such may be amended from time-to-time.
- 1.44 U.S. Implicit Price Deflator Index -- shall mean the then most recently issued year-to-year U.S. GNP Implicit Price Deflator Index, issued by the United States Department of Commerce, or, if such index shall be discontinued, a successor index as designated by the United States Government. Additional words and phrases used in this Agreement but not defined herein shall have the meanings set forth in the Bond ordinance or, if not so set forth, shall have their usual and customary meaning.

ARTICLE II TERM

The term of this Agreement shall commence on April 1, 2007 and shall terminate upon the earlier of either the Date of Beneficial Occupancy (DBO) of Concourse B or at midnight on September 30, 2009, unless sooner terminated under the provisions hereof.

ARTICLE III PREMISES

Section 3.1 - Airline Premises

3.1.A. City does hereby lease and demise to Airline, and Airline does hereby lease and accept from City the Exclusively Leased Premises, the Preferential Use Premises, and the Joint Use Premises as set forth on Exhibit "C" attached hereto.

3.1.B. City, acting by and through the Director, and Airline may, from time to time, by mutual agreement add to or delete space from Airline Premises. Any such additions shall be subject to the rates and charges set forth in Exhibit "G" hereof. In the event of any such addition or deletion, Exhibit "C" shall be revised as of the effective date of such addition or deletion to reflect agreed upon additions or deletions of space. A copy of such revised Exhibit "C" shall be filed of record with the City Clerk of the City of San Antonio and, upon such filing, shall automatically become a part of this Agreement.

3.1.B.1 City, acting by and through the Director shall advise Airline, in writing, whenever Airline's use of Exclusively Leased Premises or Preferential Use Premises extends into space not leased by Airline. The Airline shall upon receipt of City's written notice promptly (i.e., within seventy-two (72) hours) cease its use of space not leased by the Airline. In the event Airline does not immediately cease its use of space not leased to Airline or to another airline, such additional space shall be automatically added to Airline's Exclusively Leased Premises or Preferential Use Premises and Exhibit "C" shall be immediately revised to reflect the added space. A copy of such revised Exhibit "C" shall be filed of record with the City Clerk of the City of San Antonio and, upon such filing, shall automatically become a part of this Agreement.

3.1.C. All space added to Airline Premises, pursuant to this Section 3.1, shall be subject to all the terms, conditions, and other provisions of this Agreement and Airline shall pay to City all rentals, fees and charges applicable to such additional premises in accordance with the terms of this Agreement.

3.1.D. Notwithstanding the above, Airline recognizes and agrees that City's Capital Improvement Program provides for the construction of Concourse B, including an addition to Terminal 1, and the demolition of Terminal 2. Airline agrees to cooperate with a transition plan for the orderly relocation of Airlines and agrees to modify the use of their premises if required in order to accommodate the construction of Concourse B. Airline agrees that City, at its option and upon One Hundred and Twenty (120) days written notice to Airline, may recapture the premises leased to Airline if said premises are required by City to implement said construction program. In such event, City agrees to provide Airline with comparable facilities, with such comparable facilities to be substituted for Airline Premises in accordance with Paragraphs 3.1.B. and 3.1.C. to pay reasonable relocation expenses and to adjust the rentals payable by Airline.

Section 3.2 - Employee Parking

City shall make available or cause to be developed an area or areas at the Airport as common parking facilities for personnel employed at the Terminals, including Airline personnel, subject to applicable charges for such parking facilities set forth in Section 6.5.A. herein.

Section 3.3 - Federal Inspection Facilities

City shall designate areas in the Terminal (initially as shown on Exhibit "C") to be used by agencies of the United States Government for the inspection of passengers and their baggage, and for the exercise of the responsibilities of said agencies with respect to the movement of persons and property to and from the United States.

Section 3.4 - Public Address System

City shall provide and maintain a public address system in the Terminal which Airline and others similarly authorized by City shall have the right to use for flight announcements, paging and similar purposes, subject to reasonable rules and regulations established by City for the use of the public address system.

ARTICLE IV
USE OF AIRPORT AND RELATED FACILITIES

Section 4.1 - Airline Rights and Privileges

Subject to the provisions of this Agreement, Airline shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport designated in this Agreement for the following purposes:

4.1.A. The operation of its Air Transportation System for the carriage of persons, property and mail, including all activities reasonably necessary to such operation.

4.1.B. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of aircraft of Airline; and, in areas designated by City, the extended parking, servicing, loading or unloading, storage or maintenance of Airline's aircraft subject to availability of space and to such reasonable charges and regulations as City may determine for areas not part of Airline Premises. These rights shall extend to the aircraft or other equipment of any other aircraft operator with which Airline has an agreement, including the right to provide or handle all or part of such company's operations or services.

4.1.B.(1) Airline shall use its best efforts to promptly remove any of its disabled aircraft from runways, taxiways, aprons and Gate Positions (the latter only if needed by the City for operational purposes in accordance with Article XV) and shall place any such disabled aircraft only in such storage areas as may be designated by the City and may store such disabled aircraft only for such length of time and upon such terms and conditions as may be established by the City. In the event Airline should fail to remove any of its disabled aircraft as expeditiously as possible, the City may, but shall not be obligated to, cause the removal of such disabled aircraft. Airline agrees to reimburse the City for all costs due to Airline's failure to remove such disabled aircraft in accordance with this paragraph. However, it is understood and agreed that, in the event of any incident involving the on-site investigation by United States law enforcement or aviation regulatory authorities which requires that the disabled or incapacitated aircraft remain in place pending the investigation, the City agrees that the aircraft, regardless of its condition, shall be permitted to remain in place, without penalty or other sanction to Airline, until such time as Airline receives clearance from all affected authorities (including any United States law enforcement or aviation regulatory officials investigating the incident) to remove the aircraft.

4.1.C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, and the sale, handling, and providing of mail, freight, and express services.

4.1.D. The training at the Airport of personnel in the employ of or to be employed by Airline and the testing of aircraft and other equipment owned or operated by Airline; provided that such training and testing is incidental to the use of the Airport in the operation by Airline of its Air Transportation System and will not unreasonably hamper or interfere with use of the Airport and its facilities by others entitled to use of the same. Should the number of training and

testing flights by Airline exceed five (5) in any one calendar month, then and in such event Airline shall pay for such excess flights landing fee charges calculated using the then current rates established in this Agreement for Revenue Landings.

4.1.E. The sale, disposition or exchange of Airline aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment of Airline, or supplies including, without limitation, any propellant now or hereafter used in aircraft or other equipment of Airline; provided that such rights shall not be construed as authorizing the conduct of a separate business by Airline, but shall only permit Airline to perform such functions as are incidental to its conduct of its Air Transportation System. Airline shall not sell gasoline, fuels or propellants except to a wholly owned subsidiary company, parent company, a company with which Airline has a handling agreement or for use in aircraft of others which are being used solely in the operations of Airline.

4.1.F. The purchasing at the Airport or elsewhere, from any person or company of its choice, of fuels, lubricants, and any other supplies and services except as provided in Paragraphs 4.1.E. and 4.1.G. No discriminatory limitations or restrictions shall be imposed by City that interfere with such purchases.

4.1.G. The servicing by Airline, or its suppliers, of aircraft and other equipment owned or operated by Airline, at the Aircraft Parking Apron and at other locations designated by City, by truck or otherwise, with fuels, lubricants, and any other supplies. The right conferred hereby shall include, without limiting the generality hereof, the right to install and maintain by separate agreement and at locations designated by City adequate storage and distribution facilities for such aviation fuels, lubricants, and other supplies, together with the pipes, pumps, motor, filters, and other appurtenances necessary to the use thereof, with all such facilities, equipment, and appurtenances, unless otherwise agreed between Airline and City, to be and remain the severable property of Airline. If Airline is serviced by a supplier, as provided for in this Section 4.1.G, then City reserves the right to require such supplier to secure a permit from City to conduct such activity at the Airport and to agree to observe all reasonable rules and regulations promulgated by City relative to the type of operation, including vehicular movement upon any of the Airport roadways, service drives, ramps, and grounds.

4.1.H. The loading and unloading of persons, property, and mail by motor vehicles or other means of conveyance, as Airline may desire or require in the operation of its Air Transportation System, at locations designated by the City. Airline may designate the particular carrier or carriers which may transport Airline's employees, property, and mail to, from, and on the Airport; however, City reserves the right to require such carrier or carriers to secure a permit from City to conduct such activity at the Airport and to abide by all reasonable rules and regulations as may be promulgated by City.

4.1.I. The provision either alone, or in conjunction with other Scheduled Air Carriers or through a nominee, of porter/skycap service for the convenience of the public.

4.1.J. The installation and maintenance at its sole cost and expense of identifying signs in Airline's Exclusively Leased Premises and Preferential Use Premises. The general type and design of such signs shall be consistent with Airport's design standards. All such signs of whatever number, size, design, color, nature or location shall require the written approval of the City prior to their installation. Approval of Airline signs shall not be unreasonably withheld.

4.1.K. The installation, maintenance and operation of such radio, communication, meteorological and aerial navigation equipment and facilities in, on and about the Exclusively or Preferentially Leased Premises of Airline as may be necessary or convenient in the opinion of Airline for its operation, provided, however, that the location and installation of such equipment and facilities shall require the prior written approval of the City and further provided that the placement and type of installations authorized hereunder shall not interfere with Airport navigational aids or other Airport-installed or authorized equipment or with similar rights granted to other tenants or governmental agencies. In the event of such interference, City may require removal, relocation, or modification at the sole cost of Airline to eliminate such interference.

4.1.L. Such rights of way as may reasonably be required by Airline for communications, teletype, telephone, interphone, pneumatic tubes, conveyor systems, and power lines in and between the Terminal and other areas of the Airport. The location of such rights of way shall be designated by the City.

4.1.M. The installation of personal property (including but not limited to furniture, furnishings, supplies, machinery and equipment) in the Exclusively Leased Premises of Airline as Airline may deem necessary or prudent for the operation of its Air Transportation System, title to such personal property to remain with Airline in accordance with the terms of this Agreement.

4.1.N. The construction of modifications, finishes and improvements in the Exclusively Leased Premises of Airline as Airline may deem necessary or prudent for the proper operation of its Air Transportation System, in accordance with Section 8.6 of this Agreement.

4.1.O. Ingress to and egress from the Airport and Airline Premises for Airline's passengers, guests, employees, patrons, invitees, suppliers of materials, furnishers of service, aircraft, equipment, vehicles, machinery and other property, subject to all reasonable rules and regulations promulgated by City and/or the Federal Aviation Administration.

4.1.P. The installation of a limited number of soft drink vending machines and snack vending machines, subject to the prior written approval of the Director, in the non-public, Exclusively Leased Premises of Airline for the exclusive use of Airline's employees and agents.

4.1.Q Airline shall have the right to accommodate, as a Host Airline, any Affiliate within its Leased Premises subject to the following provisions:

1. Each Affiliate executes an agreement with the City similar to this Agreement; provided, however, that such Affiliate(s) shall not be required to lease any ticket counter, including

ticket office and baggage make-up space from the City so long as the Host Airline is providing regularly scheduled air service at the Airport.

2. Host Airline shall at all times be and remain solely responsible for all matters pertaining to its Leased Premises.
3. Upon the discontinuation of regularly scheduled air service at the Airport by the Host Airline or upon the termination of this Agreement by the Host Airline or the City, the Affiliate(s) shall, within thirty (30) days of such discontinuation of service or termination, lease directly from the City, at a minimum, ticket counter, including associated ticket office and baggage make-up space, such spaces may or may not be in the same location as the Host Airline's original space. The provisions of this Section 4.1.Q shall not apply to an Affiliate(s) that has discontinued air service at the Airport at any time prior to the discontinuation of regularly scheduled air service by the Host Airline.

Section 4.2 - Exclusions and Reservations

4.2.A. City reserves the right to install or cause to be installed advertising and revenue generating devices in Joint Use Premises of Airline, provided that such installation shall not unreasonably interfere with the operation of Airline authorized hereunder or substantially diminish the square footage contained in Airline Premises. City further reserves the right to install all pay telephones, other public communications equipment and a Wireless Local Area Network in any part of the Terminals. City shall be entitled to all income generated by such telephones and devices and to reasonable access upon Airline Premises to install or service such telephones and devices. Upon mutual agreement between the City and Airline, advertising may be installed in Preferential Use Premises of Airline.

4.2.B. Upon prior notice to and consultation with Airline (except in cases of emergency, in which case prior notice and consultation shall not be required), the City may from time to time temporarily or permanently close, consent to the closing of, or request the closing of any roadway and any other area at the Airport presently or hereafter used as such, so long as a reasonably equivalent means of ingress and egress as provided for in Section 4.1.0 remains available.

4.2.C. City may prohibit the use of the Landing Area by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Landing Area as described in the current Federal Aviation Administration approved Airport Layout Plan or other engineering evaluations performed subsequent to the then current Airport Layout Plan.

4.2.D. Airline shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at the Airport.

4.2.E. Airline shall not, within its reasonable control, do or permit to be done anything either by act or failure to act that shall cause the cancellation or violate the provisions of any

policy of insurance for the Airport or any part thereof or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by the Agreement. If Airline shall do or permit to be done anything either by act or failure to act that shall cause an increase in the premiums for insurance for the Airport or any part thereof, then Airline shall immediately upon demand by Director pay the amount of such increase. If such Airline act or failure to act shall cause cancellation of any policy, then Airline shall immediately upon notification from City take such action as is necessary to cause reinstatement of said insurance.

4.2.F. The rights and privileges granted to Airline under this Article to contract with third parties for obtaining services and materials are subject to and subordinate to restrictive agreements, franchises, licenses, and other rights previously granted by City to fixed base operators, ground transportation carriers and other providers. Copies of such agreements are available for inspection by Airline at the office of the Director.

4.2.G. Except as provided in Section 4.1.P. herein or as may subsequently be provided in a separate agreement, Airline shall not maintain or operate in the Terminals or elsewhere on Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling food or beverages to the public or to its employees and passengers nor shall Airline in any manner otherwise provide for the sale of food and beverages at the Airport. Airline may provide free food and beverage on a limited or infrequent basis to the employees and passengers of Airline as well as a free public telephone in its Exclusively Leased Premises. Airline may by separate agreement containing terms and conditions determined satisfactory by Director engage in the sale of food or beverage at any "V.I.P. room" or similar private club at the Airport, provided, however, that Airline shall then pay a concession fee to City in addition to the rental charge for the space occupied by such club. Said concession fee shall be equal to the amount of gross sales at such club multiplied by a rate determined according to the highest concession fee schedule paid to City by any concessionaire of similar sales at the Airport. No fee shall be due where complimentary food or beverage is provided at any "V.I.P. room".

4.2.H. Any and all rights and privileges not granted to Airline in this Agreement are hereby reserved for and to the City.

Section 4.3 - No Other Charges

Except as provided in this Agreement, the rentals, fees and charges payable by Airline to City hereunder shall not be increased by City without the consent of Airline. City shall not, without the consent of Airline, add any new rent, fee or charge payable by Airline to City for any of the privileges granted to Airline or space leased by Airline hereunder; provided, however, nothing herein contained shall prevent City from charging any rent or levying any fee or charge for any additional space furnished to, and accepted by, Airline, or for any additional service provided or privileges granted to, and accepted by Airline, if said space furnished, service provided or privilege granted is not a part of the space leased, services provided or privileges specified herein. City shall not be prevented from charging for any space or service which City is required to furnish Airline under any federal, state or local law, ordinance, or regulation, if said space or service is not a part of the space leased or services provided herein. Notwithstanding the above,

should Airline engage in any activity for which privilege fees are paid to City by others conducting similar activities, then the City reserves the right to charge Airline comparable privilege fees unless otherwise provided for herein.

ARTICLE V
MAINTENANCE AND OPERATION OF AIRPORT

Section 5.1 - General

5.1.A. The City agrees that it will with reasonable diligence prudently develop, improve, and at all times maintain and operate Airport with adequate qualified personnel and keep Airport in good repair including, without limitation, Terminals, (except as set forth in Paragraphs 5.1.B and 5.1.C of this Section), Landing Area, Ramp Area, and all appurtenances, facilities and services now or hereafter connected therewith as the same relate to Airline's Air Transportation System; will use its best efforts to keep Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; and will develop, maintain and operate Airport in all respects in a manner at least equal to comparable United States airports of substantially similar size, use and activity except for conditions beyond the control of City. City shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided by City, whether due to mechanical breakdown or for any other causes beyond the reasonable control of the City.

5.1.B. Airline will furnish janitorial service to its Exclusively Leased Premises, Preferential Use Premises and its preferential aircraft parking apron, keeping them in a neat, orderly, sanitary and presentable condition, free of trash, rubbish or other debris, including, but not limited to, fuel or lubricant spills. Airline shall cause to be removed, at Airline's own expense, from its assigned premises all waste, garbage and rubbish and agrees not to deposit same on any part of Airport, except that Airline may deposit same temporarily in its Exclusively Leased Premises or Preferential Use Premises or in space designated by City in connection with collection for removal. Should Airline refuse or neglect to provide adequate janitorial service to its Exclusively Leased Premises, Preferential Use Premises and its preferential aircraft parking apron as provided herein, City shall give written notice to Airline of its failure to provide adequate janitorial service to its premises. Airline shall have five (5) days following receipt of said notice to perform the specified janitorial service. If Airline has not furnished the specified janitorial service within the five (5) day period, City shall have the right to perform such janitorial service on behalf of the Airline. City's operating and maintenance cost for such janitorial service plus a 15% administrative charge shall be paid for by Airline no later than fifteen (15) days following receipt of an invoice from the City.

Airline will maintain its Exclusively Leased Premises, Preferential Use Premises and its preferential aircraft parking apron in safe and proper working order as specified in Exhibit "D". Should Airline refuse or neglect to maintain its Exclusively Leased Premises, Preferential Use Premises and its preferential aircraft parking apron as specified in Exhibit "D", City shall give written notice to Airline of its failure to maintain its premises. Airline shall have twenty (20) days following receipt of said notice to perform the specified maintenance unless such failure to

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

5.1.C. Responsibility for maintenance, cleaning and operation of facilities shall be as set forth in Exhibit "D".

ARTICLE VI **RENTALS, FEES AND CHARGES**

Airline shall pay City rentals for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted hereunder during the term of this Agreement, and shall file periodic reports as specified herein. Notwithstanding anything in this Agreement to the contrary, all amounts payable by Airline to or on behalf of City under this Agreement, whether or not expressly denominated as rent, shall constitute rent for the purposes of the Bankruptcy Code of the United States of America.

Section 6.1 - Landing Fee Charges

6.1.A. Airline shall pay to city within fifteen (15) days following the end of each calendar month, without demand or invoicing, landing fee charges for Revenue Landings for the preceding month at the rate and in the amount calculated in accordance with Exhibit "G".

6.1.B. Airline shall include with its payment for landing fee charges a copy of its applicable Monthly Landed Weight/Fee Report (Exhibit "F"), submitted to City in accordance with Section 6.8 hereof, showing the basis for its landing fee charges.

Section 6.2 - Rentals for Exclusively Leased Premises and Joint Use Premises

6.2.A. Airline shall pay to City in advance, on the first day of each month, without demand or invoicing, rentals for Airline's Exclusively Leased Premises at the rates and in the amounts calculated in accordance with Exhibit "G".

6.2.B. Airline's proportionate share of rentals for Terminal baggage claim and tug lane Joint Use Premises shall be paid by Airline to City no later than 15 days following receipt by Airline of billing therefore and shall be calculated in accordance with the following formula:

6.2.B(1) The total number of square feet of each category and area of Joint Use Premises shall be multiplied by the appropriate annual square foot rate calculated in accordance with Exhibit "G" for such category of space. Twenty percent (20%) of the total amount calculated for

each category shall be divided equally among all Scheduled Air Carriers using said category and area of Joint Use Premises. An Airline executing this Agreement and its Affiliated Airlines designated in Exhibit "I" shall be treated as a single entity for the purposes of the calculation of Joint Use Charges which will be paid by that Airline. Also, any Scheduled Air Carrier that is not a Signatory whose Enplaned Passengers equal less than one percent (1%) of the total Enplaned Passengers for the current month using said category and area of Joint Use Premises shall not be included in the twenty percent (20%) Joint Use calculation. However, if Airline operates less than 15 days during a month, it shall not be included in the 20% joint use calculation.

6.2. B (2) Eighty percent (80%) of the total amount calculated for each category and area shall be prorated among Scheduled Air Carriers using such category and area of premises based on the ratio of each such Scheduled Air Carrier's Enplaned Passengers during the calendar month for which such charges are being determined, to the total of all Enplaned Passengers during said calendar month. For purposes of this calculation, each Scheduled Air Carrier's Enplaned Passengers total shall include, in addition to the Enplaned Passengers served by such Scheduled Air Carrier, the number of Enplaned Passengers handled by said Scheduled Air Carrier for a Guest Airline or for a Non-Signatory Airline not having an agreement with City that provides for the direct payment to City of appropriate charges for use of Joint Use Premises.

6.2.C. Airline's proportionate share of rentals for Terminal concourse portions of the Joint Use Premises shall be paid by Airline to City no later than fifteen (15) days following receipt by Airline of billing therefore and shall be calculated in accordance with the following formula:

6.2.C(1) The number of square feet of each concourse area, as determined in accordance with Exhibit "G", shall be multiplied by the appropriate annual square foot rate calculated in accordance with Exhibit "G" for such category of space. Twenty percent (20%) of the total amount calculated for each concourse area shall be divided equally among all Scheduled Air Carriers using said concourse area. An Airline executing this Agreement and its Affiliated Airlines designated in Exhibit I shall be treated as a single entity for the purposes of the calculation of Joint Use Charges which will be paid by that Airline. Also, any Scheduled Air Carrier that is not a Signatory Airline whose Enplaned Passengers equal less than one percent (1%) of the total Enplaned Passengers for the current month using said category and area of Joint Use Premises shall not be included in the twenty percent (20%) Joint Use calculation. However, if Airline operates less than 15 days during a month, it shall not be included in the 20% joint use calculation.

6.2.C(2) Forty percent (40%) of the total amount calculated for each concourse area shall be prorated among all Scheduled Air Carriers using said concourse area based upon the ratio of each such Scheduled Air Carrier's number of Revenue Landings during the calendar month for which such charges are being determined, to the total of all Revenue Landings using said concourse area during said calendar month. For purposes of this calculation, each Scheduled Air Carrier's Revenue Landings total shall include, in addition to the number of Revenue Landings conducted by such Scheduled Air Carrier, the number of Revenue Landings handled by said Scheduled Air Carrier for a Guest Airline or for a Non-signatory Airline not having an agreement

with City that provides for the direct payment to City of appropriate charges for use of Joint Use Premises.

6.2.C(3) Forty percent (40%) of the total amount calculated for each concourse area shall be prorated among all Scheduled Air Carriers based upon the ratio of each such Scheduled Air Carrier's Enplaned Passengers during the calendar month for which such charges are being determined, to the total Enplaned Passengers during said calendar month. For purposes of this calculation, each Scheduled Air Carrier's Enplaned Passengers total shall include, in addition to the Enplaned Passengers served by such Scheduled Air Carrier, the number of Enplaned Passengers handled by said Scheduled Air Carrier for a Guest Airline or a Non-Signatory Airline not having an agreement with City that provides for the direct payment to City of appropriate charges for use of Joint Use Premises.

6.2.D. City shall estimate the number of Revenue Landings and Enplaned Passengers for any Scheduled Air Carrier which fails to report its Revenue Landing and enplanement data and shall also make appropriate adjustments in the event a Scheduled Air Carrier ceases to be a user of a particular category and area of Joint Use Premises.

Section 6.3 - Rentals for Preferential Use Premises

Airline shall pay to City in advance on the first day of each month, without demand or invoicing, rentals for Airline's Preferential Use Premises, calculated in accordance with Exhibit "G".

Section 6.4 - Federal Inspection Service Facilities Charges

6.4.A. Airline shall pay charges for use of the Federal Inspection Service Facilities at the rates and in the amounts calculated in accordance with Exhibit "G".

6.4.B. Each Scheduled Air Carrier and air transportation company using said facilities shall pay its proportionate share of the Federal Inspection Service charges based on a deplanement fee, as calculated in accordance with Exhibit "G", multiplied by the number of international passengers processed through the Federal Inspection Service Facilities. Such FIS Use Fee may in the City's sole discretion be adjusted yearly as required in order to permit the City to more fully recover its costs and/or become more competitive with other airports providing international service.

6.4.C. City shall issue monthly invoices for each Scheduled Air Carrier's and other air transportation company's proportionate share of said charges, and remittance of Airline's share of use charges shall be made within 15 days of receipt of invoice.

Section 6.5 - Other Charges

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

6.5.A. Employee Parking Charges

Should Airline elect to furnish parking for its employees, Airline shall pay to City in advance on the first day of each month, without demand or invoicing, charges as are reasonably established by the City for the use of employee parking areas designated in Section 3.2 herein.

6.5.B. Miscellaneous

Charges for miscellaneous items or activities not specified herein (e.g. badges, extraordinary electrical usage, personal property storage, etc.) shall be assessed by City as reasonably determined by Director and paid by Airline.

Section 6.6 - Refund To Signatory Airlines

6.6.A. For the purpose of providing refunds with respect to rentals, fees, and charges payable by Signatory Airlines a separate Airline Fees Refund Account shall be created and established by the City at one of its depositories.

6.6.B. The amounts in the Capital Improvement Fund established and maintained pursuant to Section 19 of the Bond Ordinance shall be used and shall be subject to the priority of claim and use as provided in said Section 19. As soon as practicable after the end of each Fiscal Year the City agrees to transfer to the Airline Fees Refund Account, from any surplus in the Capital Improvement Fund which is available for any other lawful purpose related to the Airport System, an amount equal to the Airline Fees Refund calculated pursuant to Exhibit "G" to this Agreement, or so much of such amount as is so available.

6.6.C. To the extent any such funds become available in the Airline Fees Refund Account, and to the extent the City is not in default with respect to its covenants in the Bond Ordinance, nor expects to be in the then current Fiscal Year, and to the extent Airline is not in default of any of the terms and covenants herein provided, Airline shall receive a proportionate share of said funds in the manner and in the amounts established pursuant to Section 7.3.

6.6.D. Airline agrees that upon an Event of Default (as defined in Section 11.1 of this Agreement) the City shall have the right to set off and apply against all amounts it is entitled to receive under this Agreement all refunds which Airline would otherwise receive under Section 6.6 of this Agreement.

Section 6.7 - Late Payments

If Airline shall fail to make payment within 10 days of the dates due as set forth in this Article VI, then Airline shall pay to City a monthly service charge equal to the maximum allowable under state statutes on any such overdue amount, plus reasonable attorneys' fees incurred by City in attempting to obtain payment.

Section 6.8 - Information to be supplied by Airline

6.8.A. Not later than ten (10) days after the end of each month, Airline shall file with City a written report on forms provided by City (Exhibits "E" and "F") for activity conducted by Airline during said month.

6.8.B. Not later than ten (10) days after the end of each month, separate reports (Exhibits E and F) shall be filed by Airline with City regarding any aircraft flights (whether scheduled or non-scheduled) handled by Airline for other aircraft operators not having an agreement with City that provides for the handled carrier to submit its own reports to City. City may request Airline to report the number of scheduled flights departing each gate during the month.

6.8.C. Upon City's receipt of activity data submitted by all airlines for the preceding month, City shall submit to Airline a composite statistical report for the preceding month. The statistical report will be used by the City in calculating rentals for Joint Use Premises, and any other rentals, fees and charges based upon such activity data.

6.8.D. If necessary statistical data for the then current month is not available by the tenth (10th) day of the succeeding month, the City shall base its charges upon the most recent data available and transmitted by Airline to City, with such charges to be adjusted on the next succeeding payment date following the date upon which current data are available.

6.8.E. Airline shall, at all times, maintain and keep books, ledgers, accounts or other records wherein are accurately kept all entries reflecting the total number of Revenue Landings at Airport and the Maximum Gross Landed Weight of each such aircraft together with the traffic statistics to be reported hereunder. Such books, ledgers, accounts and records shall be made available for examination by City or its duly authorized representative in the City of San Antonio during all reasonable business hours upon ten (10) days written request.

6.8.F. 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, fees and charges are based as provided in this Article and shall not be construed as a waiver of interest penalty due, if any.

ARTICLE VII
ADJUSTMENT OF RATES
FOR RENTALS, FEES AND CHARGES

Section 7.1 - General

7.1.A. Rates for rentals, fees and charges identified in Exhibit "G" shall be reviewed annually and may be adjusted as necessary effective October 1 of each Fiscal Year (or upon the first day of each new Fiscal Year), and upon notice to Airline and following the method of adjustment set forth in Paragraph 7.2.B. hereof, at any other time that unaudited monthly Airport financial data indicates that total rentals, fees and charges payable pursuant to the then current rate schedules are estimated and anticipated by City to vary by more than ten (10) percent from

the total rentals, fees and charges that would be payable based upon the use of actual financial data to date for that Fiscal Year.

7.1.B. Adjustments to rentals, fees and charges pursuant to this Article VII shall apply without the necessity of formal amendment of this Agreement. In accordance with Section 7.2 herein, a statement showing the calculation of the new rates for rentals, fees and charges as shown in Exhibit "G" shall be prepared by City and transmitted to Airline. Said statement shall then be deemed part of this Agreement.

7.1.C. If adjustment of rentals, fees and charges is not completed by the City 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. At the time such adjustment is concluded, appropriate revisions shall be made to adjust rentals, fees and charges paid to date in said Fiscal Year to the amounts that would have been paid had the new rates been effective at the beginning of said Fiscal Year.

Section 7.2 - Method of Adjustment

7.2.A. On or about July 1 of each Fiscal Year (or approximately 90 days prior to the end of the then current Fiscal Year), City shall notify Airline of the schedule of rates for rentals, fees and charges it intends to establish for the ensuing Fiscal Year. Said rates shall be determined and presented to Airline substantially in conformance with the methods and format described in Exhibit "G".

7.2.B. Within forty-five (45) days after the forwarding of the intended schedule of rates for rentals, fees and charges, City, upon the written request of the AAAC, agrees to meet collectively with the Signatory Airlines at a mutually convenient time for the purpose of discussing such rentals, fees and charges. In advance of said meeting, City agrees to make available to the Signatory Airlines any reasonably requested additional information relating to the determination of the proposed rates. City agrees to fully consider the comments and recommendations of the Signatory Airlines prior to finalizing its schedule of rates for rentals, fees and charges for the ensuing period.

7.2.C. Following said meeting, and prior to the end of the then current Fiscal Year, City shall notify Airline of the rates to be established for the ensuing period.

Section 7.3 - Airline Refunds

Any funds available in the Airline Fees Refund Account pursuant to the procedures established in Exhibit "G" shall be credited to the Signatory Airlines in direct proportion that the amount of rentals paid by each Signatory Airline for Terminal 1 and Terminal 2 bears to the total rentals paid by all Signatory Airlines for Terminal 1 and Terminal 2 in the Fiscal Year for which the audit was completed, subject to the limitations set forth in Section 6.6 hereof.

Section 7.4 - City Covenants

7.4.A. City covenants that for purposes of keeping its books of account and allocating revenues and expenses, it will observe sound, 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.

7.4.B. City shall operate the Airport in a manner so as to produce revenues from concessionaires, tenants and other users of Airport of a nature and amount which would be produced by a reasonably prudent operator of an Airport of substantially similar size, use and activity, with due regard for the interests of the public.

7.4.C. City shall in accordance with the Bond Ordinance use all Gross Revenues exclusively for the construction, maintenance, operation, development, financing and management of the Airport System.

7.4.D. City shall not include the cost of any service provided by any governmental agency other than City as an expense in the Airline rate base unless the service and cost are justified and a direct charge is paid by the Airport.

ARTICLE VIII
AIRPORT IMPROVEMENTS

Section 8.1 - General

The parties hereto recognize that capital expenditures to preserve, protect, enhance, expand, or otherwise improve the Airport System, or any part thereof, will be required during the term of this Agreement. Any such capital expenditures shall be subject to the provisions of this Article VIII.

Section 8.2 - Improvements and Development by City

8.2.A. On or about July 1 (or approximately 90 days prior to the end of the then current Fiscal Year), City shall notify Airline in writing of its proposed capital expenditures for the ensuing Fiscal Year, as contained in the City's proposed capital expenditure budget for the Airport System for said Fiscal Year. City further reserves the right to notify Airline in writing at any other time of proposed capital expenditures subject to AAAC review procedures as set forth in this Section 8.2.

8.2.B. In the event any capital expenditure proposed by City is subject to AAAC review procedures pursuant to this Article VIII, City agrees to provide to Airline a written description of such capital expenditure, such description to include the purpose, method of financing and any reasonably anticipated effect upon Airline rates and charges hereunder and, at the written request of the Chairman of the AAAC, to meet collectively with the Signatory Airlines within 45 days

after notification to Airline of said expenditure to further discuss the proposed expenditure. Any such meetings shall normally occur concurrently with meetings requested by AAAC pursuant to Section 7.2 to review the City's intended rates for rentals, fees and charges for the ensuing Fiscal Year, and at any other time necessary to comply with the provisions of this Article VIII.

8.2.C. City agrees to consider the comments and recommendations of the AAAC with respect to said capital expenditures. City shall have the right at any time to proceed with capital expenditures permitted pursuant to Section 8.3, and with other capital expenditures subject to the limitations of Paragraphs 8.2.D and 8.2.E.

8.2.D. A majority shall be at least 51 percent in number of Signatory Airlines, representing at least 51 percent of the Airport's total landed weight for all Signatory Airlines during the most recent complete Fiscal Year. However, any Affiliate of a Signatory Airline to this Agreement shall not participate in airline voting. Such majority shall have the right to request a deferral of a particular capital expenditure not excluded under Section 8.3. Any such request for deferral must be in writing, and submitted to City within 30 days following a meeting requested pursuant to Paragraph 8.2.B to discuss said capital expenditure, or in the event no such meeting is requested, within 30 days following initial notification by City to Airline of said proposed capital expenditure.

8.2.E. In the event the Signatory Airlines request a deferral of a proposed capital expenditure in accordance with Paragraph 8.2.D, City shall not undertake said expenditure for 180 days following the deferral request, or such shorter period, if specified in the Signatory Airlines' written deferral request made in accordance with Paragraph 8.2.D for said capital expenditure. Notwithstanding the above, a majority (at least 51 percent) in number of Signatory Airlines, representing a majority (at least 51 percent) of the Airport's total landed weight for all Scheduled Air Carriers during the most recent complete Fiscal Year, may at any time eliminate any remaining portion of a 180 day deferral period for a particular capital expenditure by requesting such elimination in writing to the City. Following any deferral period set forth in this paragraph, City shall have the right to undertake such deferred capital expenditure.

8.2.F. Capital expenditures for Fiscal Years 2002/06 identified in Exhibit "H" will be subject to AAAC review procedures as set forth in this section 8.2. City agrees to use its best efforts to implement the capital projects identified in Exhibit "H" utilizing the amounts and sources of funding shown for each project.

Section 8.3 - Capital Expenditures by City Not Subject To Signatory Airline Deferral

The following capital expenditures shall not be subject to Signatory Airline Deferral pursuant to Section 8.2:

8.3.A. Capital expenditures having a net cost to City less than an amount equal to \$761,000 adjusted annually at the beginning of each Fiscal Year after 2001-02 in accordance with changes in the U.S. Implicit Price Deflator Index, provided that such capital expenditures shall be for functionally complete project elements, it being the intent of the parties hereto that a

single project not be spread across multiple fiscal years solely to escape the provisions of Paragraph 8.2.B. This provision shall not, however, act to preclude the City from completing separate projects that are reasonably part of a multi-year program, and the City has advised the Signatory Airlines of the general scope of the program encompassing such individual project elements. Aggregate projects with total cost in excess of \$761,000 will be subject to Paragraph 8.2.D.

8.3.B. Projects required for public safety when directed by the FAA, National Transportation Safety Board or similar governmental authority having jurisdiction over Airport, Airline's operations, or the safety aspect of Airport's operations.

8.3.C. Casualty damage to Airport System property which exceeds the proceeds of insurance, which property must be rebuilt in kind or replaced in kind in order to satisfy City obligations or maintain a source of revenue.

8.3.D. 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 City for all costs (direct or indirect) associated with such Special Purpose Facilities.

8.3.E. Improvements or additions necessary to insure compliance with lawful orders or requirements of other authorities that are necessary for aircraft operations or are related to the issuance of federal or state grants to City.

8.3.F. Improvements or additions necessary to settle claims, satisfy judgments, or comply with orders against City by reason of its ownership, operation, maintenance, or use of the Airport System.

8.3.G. Capital expenditures of an emergency nature which, if not made, would result in the closing of any airport in the Airport System within forty-eight (48) hours.

8.3.H. Expansion of the Airport System for the increased requirements of any Signatory Airline(s) provided such Signatory Airline(s) agrees in writing to increased rentals, fees and charges sufficient to cover the payment of debt service if financed with Additional Bonds, or an equivalent amount if financed in whole or part from the Capital Improvement Fund, to finance its exclusive facilities portions of the expansion project. If said expansion necessitates the concurrent construction of related public areas and/or support systems, the costs and expenses of such facilities shall be treated under this Agreement in the same manner as the costs and expenses associated with other similar public areas and/or support systems previously constructed.

8.3.I. Expansion of the Airport System to accommodate a Requesting Airline under the same terms and conditions as contained in 8.3.I above, provided such Requesting Airline enters into an agreement substantially similar to this Agreement.

8.3.J. Any other financially self-supporting projects.

Section 8.4 - Use of Capital Improvement Funds

8.4.A. Funds available in the Capital Improvement Fund shall not normally be used to finance the exclusive facilities portions of projects undertaken pursuant to Paragraphs 8.3.I and 8.3.J. above. In the event such funds are used for this purpose, City shall use its best efforts to require repayment of these funds within 5 years from the date of expenditure in accordance with said paragraphs, including interest computed at the same rate as would have been received if the funds remained in the Capital Improvement Fund.

8.4.B. Costs for projects in Airline cost centers paid from the Capital Improvement Fund shall be included in the calculation of Signatory Airline rentals, fees, and charges upon completion of the project. The amortization of the amount of Capital Improvement funds utilized will be calculated over the estimated useful life of the project, based on City's Cost of Capital.

Section 8.5 - Improvement by City to Terminals

Notwithstanding the above, both Airline and City agree and acknowledge that City reserves the right to perform during the term of this Agreement certain improvements to the Terminals. City will use its best efforts to perform such improvements in a manner so as not to unreasonably interfere with the operation of Airlines authorized hereunder.

Section 8.6 - Alterations and Improvements by Airline

8.6.A. Whenever consistent with this Agreement, Airline shall have the right to construct and install, at its sole expense, improvements in its Airline Premises as Airline deems to be necessary for its operation; provided, however, that the plans and specifications, location and construction schedule shall be approved by Director in writing prior to the commencement of any and all such construction or installation. Additionally, prior to the commencement of any such improvements Airline shall obtain insurance and/or other protection of such types and in such amounts as reasonably deemed necessary by Director and shall submit evidence that such has been obtained to Director. Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Ramp Area. Airline shall deliver to Director reproducible "as built" of Airline improvements and additions no later than thirty (30) days following the substantial completion of such improvements and additions.

8.6.B. Any construction or installation shall be at the sole risk of Airline and shall be in accordance with all applicable State and local codes and laws and subject to inspection by the City. Further, should Airline use a third party contractor for construction or installation of improvements with a value in excess of \$10,000.00, the entity to whom the construction/installation contract is awarded shall furnish a performance and a labor and material payment bond. Such bonds shall guarantee payment of all wages for labor and services engaged, and of all bills for materials, supplies and equipment used in the performance of said construction

contract. Airline shall assure that any work associated with such construction or installation shall not unreasonably interfere with the permitted activities of other Airport tenants and users. Airline shall promptly discharge any lien filed against its property at the Airport by posting a bond or other adequate security.

8.6.C. All improvements made to Airline Premises and additions and alterations thereto made by Airline shall be and remain the property of Airline until the expiration of the term of this Agreement, as set forth in Article II, or upon termination of this Agreement (whether by expiration of the term, cancellation, forfeiture, or otherwise, whichever first occurs), at which time the said improvements shall become the property of the City, provided, however, that any trade fixtures, signs and other personal property of Airline not permanently affixed to Airline Premises shall remain the property of Airline unless otherwise dictated according to the provisions of Section 13.2 of this Agreement.

8.6.D. Airline shall require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance and physical damage insurance on a Builder's Risk form with the interest of City endorsed thereon, in such amounts and in such manner as City may reasonably require. City may require additional insurance for any alterations or improvements approved hereunder, in such limits as City reasonably determines to be necessary.

8.6.E. Any removal by Airline of improvements and property constructed and installed by Airline under the terms of this Agreement shall be accomplished pursuant to Article XIII and shall require the written consent of Director prior to such removal.

8.6.F. In its use of Airline Premises, Airline shall provide loading bridge(s) to serve each Airline aircraft parking position designed to accommodate the use of loading bridge(s) . In the event Airline decides not to provide loading bridge(s), City may provide loading bridge(s) and charge a use fee therefore which will reimburse City for the full cost of such bridge(s). Said loading bridge(s) shall be new or reconditioned and in an appearance satisfactory to City.

Exterior of loading bridge(s) shall be painted to match Pittsburgh Paint low luster enamel Bridal White P2534. One airline logo may be installed on opposite sides of the loading bridge but shall not exceed 50 square feet.

ARTICLE IX **DAMAGE OR DESTRUCTION**

Section-9.1 - Partial Damage

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

Section 9.2 - Substantial Damage

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

Section 9.3 - Damage Not Repairable

9.3.A. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Airline Premises incapable of being repaired as reasonably determined by City and Airline, City shall notify Airline within a period of ninety (90) days after the date of such damage of its decision to reconstruct or replace said space, provided City shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected Airline Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Airline.

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

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

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

Section 9.4 - General

9.4.A. Notwithstanding the provisions of this Article IX, in the event that due to the negligence or willful act of Airline or of its employees (acting within the course or scope of their employment) or agents, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the restoration or replacement of said Airline Premises and Airline shall have no option to cancel the Agreement under the provisions of this Article IX, Section 9.3. To the extent that the cost of repairs shall exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Airline shall pay the amount of such cost to the City.

9.4.B. City shall maintain levels of insurance required under its Bond Ordinance, provided, however, that the City's obligations to reconstruct or replace under the provisions of this Article IX shall in any event be limited to restoring affected Airline Premises to substantially the condition that existed prior to the improvements made by Airline and shall further be limited to the extent of insurance proceeds available to City for such reconstruction or replacement. Airline agrees that if the City elects to reconstruct or replace as provided in this Article IX, then Airline shall proceed with reasonable diligence and at its sole cost and expense to reconstruct and replace its improvements, signs, fixtures, furnishings, equipment and other items provided or installed by Airline in or about Airline Premises in a manner and in a condition at least equal to that which existed prior to its damage or destruction.

ARTICLE X
INDEMNIFICATION AND INSURANCE

Section 10.1 - Indemnification

10.1.A. AIRLINE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, 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 actions, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of resulting from or related to Airline's activities in, on or about Airline Premises, or from any operation or activity of Airline upon the Airport Premises, or in connection with its use of Airline Premises, including any acts or omissions of Airline, any agent, officer, director, representative, employee, consultant or subcontractor of Airline, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement, 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 AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Airline shall promptly advise the City in writing of any claim or demand against the City or Airline known to Airline related to or arising out of Airline's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Airline's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Airline of any of its obligations under this paragraph.

10.1.B. It is the express intent of the parties to this Agreement, that the indemnity provided for in this section (Section 10.1), is an indemnity extended by Airline 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. Airline 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.

10.1.C. Notwithstanding anything in this Article X to the contrary, the liability of the Airline for the City's negligence, inclusive of all defense costs expended by or on behalf of the Airline for the City's defense under this Article X shall not exceed ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.

Section 10.2 - Insurance

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

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

10.2.C. Airline’s financial integrity is of interest to the City, therefore, subject to Airline’s right to maintain reasonable deductibles in such amounts as are approved by the City, Airline shall obtain and maintain in full force and effect for the duration of this Agreement and any extension thereof, at Airline’s sole expense, insurance coverage written on occurrence basis, by companies authorized and admitted to do business in and to be served notice in the State of Texas and rated A– or better by A.M. Best Company and/or otherwise acceptable to Lessor, in the following types.

TYPE OF INSURANCE

LIMITS OF LIABILITY

Commercial General Liability insurance to include coverage for the following:

General Aggregate	\$10,000,000 per occurrence; \$25,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage.
• Premise/Operations	\$10,000,000
• Pollution Liability*	\$5,000,000/occurrence/annual aggregate \$500,000/self–insurance retention
• Products/Completed Operations	\$10,000,000
• Contractual Liability	\$10,000,000
• Explosion, Collapse. Underground	\$10,000,000
• Broad Form Property Damage	\$10,000,000
• Fire legal liability	\$50,000
• Business Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000
• Scheduled Autos	
• Owned/Leased Automobiles	
• Non–owned Automobiles	
• Hired Automobiles	
	Statutory
• Worker’s Compensation	\$1,000,000 / \$1,000,000 / \$1,000,000
• Employer’s Liability	80% of actual cash value of Airline Property on premises, to include improvements and betterments.
• Property Insurance Form	

*If Airline has been approved as self-funded or self–insured under Texas Law and complies with the City of San Antonio Self–Insurance requirements set forth in Exhibit J hereto, City may accept the Airline’s certificate of self-funding or self–insurance as equivalent to, and substitute for that portion of the Pollution Liability insurance above required. Notwithstanding such acceptance, if any, City in its sole discretion reserves the right to rescind such acceptance or to amend the terms and conditions set forth in Exhibit J upon the provision to Airline of thirty (30) days advance notice thereof.

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

law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by Airport, the Airline shall exercise reasonable efforts to accomplish such changes in policy, and shall pay the cost thereof.

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

- Name the City of San Antonio and its officers, employees, agents and elected representatives as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the Airport, with the exception of the worker's compensation and professional liability policy;
- The Airline's insurance shall be deemed primary with respect to any collectible insurance or self insurance carried by the City of San Antonio for liability arising out of operations under the contract with the Airport; and
- Worker's compensation and employers' liability policy will provide a waiver of subrogation in favor of the City of San Antonio.
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City of San Antonio is an additional insured shown on the policy.

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

CITY OF SAN ANTONIO
Aviation Department
9800 Airport Blvd.
San Antonio, Texas 78216-9990

10.2.G. The proceeds for any such insurance, paid on account of fire, explosion or other damage shall be used to defray the cost of repairing, restoring or reconstructing said improvements, as necessary.

10.2.H. It is expressly understood and agreed that all operations of Airline under this Agreement between Airport and Airline shall be covered by such policies of insurance or self insurance as approved by the City's Risk Manager and that all personal property placed in the Leased premises shall be at the sole risk of Airline. The procuring of policies of insurance shall not be construed to be a limitation upon Airline's liability or as a full performance on its part of the indemnification provisions of this Agreement. Airline's obligations are notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the Airport.

Section 10.3 - Performance Guarantee

Airline agrees to deliver to the Aviation Director no later than fourteen (14) days following the execution of this Agreement and maintain in force throughout the term hereof either a surety bond, performance bond or an irrevocable letter of credit payable to City in the amount of \$251,000.00. Notwithstanding the foregoing, however, the parties hereto agree that if at any time during the term of this Agreement the total amount of rentals, fees and charges payable by Airline in a three month period hereunder shall be adjusted by more than ten percent (10%), then, and in such event, the amount of such surety bond, performance bond or irrevocable letter of credit shall be adjusted to such amount as in good faith shall be estimated by City. Such surety bond, performance bond or irrevocable letter of credit shall be in form and content satisfactory to City and shall be conditioned on the satisfactory performance of all terms, conditions and covenants contained herein during the term hereof. If a surety bond or performance bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. If an irrevocable letter of credit shall be delivered, it shall be drawn upon a bank reasonably satisfactory to City.

ARTICLE XI **CANCELLATION BY CITY: EVENTS OF** **DEFAULT BY AIRLINE**

Section 11.1 - Events of default by Airline

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

11.1.A. Airline fails to pay rentals, fees and charges when due, and such default continues for a period of ten (10) days after receipt by Airline of written notice thereof.

11.1.B. Airline fails after the receipt of written notice from City to keep, perform or observe any term, covenant or condition of this Agreement (other than as set forth in 11.1.A. above) to be kept, performed or observed by Airline, and, such failure continues for thirty (30) days after such receipt or if by its nature such Event of Default cannot be cured within such thirty (30) day period, if Airline shall not commence to cure or remove such Event of Default within said thirty (30) days and to cure or remove same as promptly as reasonably practicable.

11.1.C. Airline shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

11.1.D. An Order for Relief shall be entered at the request of Airline or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.

11.1.E. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Airline and shall not be dismissed within sixty (60) days after the filing thereof.

11.1.F. By or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, or agency, an officer, receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Airline and such possession or control shall continue in effect for a period of fifteen (15) days.

11.1.G. Airline shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter other than through merger with a successor corporation, as set forth in Paragraph 14.1.A. of this Agreement.

11.1.H. The rights of Airline hereunder shall be transferred to, pass to, or devolve upon, by operations of law or otherwise, any other person, firm, corporation, or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in paragraphs C through G of this Section 11.1.

11.1.I. Airline shall voluntarily discontinue its operations at the Airport for a period of thirty (30) days unless otherwise agreed to by City and Airline.

Section 11.2 - Remedies for Airline's Default

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

11.2.B. Even if City elects to terminate this Agreement, Airline shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until expiration of this Agreement subject to the provisions of Paragraph 11.2.C of this Agreement.

11.2.C. In the event that City relets, rentals, fees and charges received by City from such reletting shall be applied: first, to the payment of any indebtedness other than rentals, fees and charges due hereunder from Airline to City; second, to the payment of any cost of such reletting; third, to the payment of rentals, fees and charges due and unpaid hereunder; and the residue, if any, shall be held by City and applied in payment of future rentals, fees and charges as the same may become due and payable hereunder. Should that portion of such rentals, fees and charges received from such reletting which is applied to the payment of rentals, fees and charges hereunder, be less than the rentals, fees and charges payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to City. Airline shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such reletting not covered by the rentals, fees and charges received from such reletting.

11.2.D. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between City and Airline with respect to any obligation or alleged obligation of Airline to pay money, the payment under protest by Airline of the amount claimed by City to be due shall not waive any of Airline's rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then City shall as promptly as reasonably practicable reimburse Airline any amount determined as not due plus interest on such amount at the highest rate allowable under applicable law.

11.2.E. Airline shall pay to City all costs, fees, and expenses incurred by City in the exercise of any remedy upon an Event of Default by Airline.

11.2.F. To the extent that the City's right to terminate this Agreement as a result of an event enumerated in Sections 11.1.A through 11.1.I of this section is determined to be unenforceable under the Federal Bankruptcy Code, as amended from time to time, or under any other statute, then the Airline and any trustee who may be appointed agree: (i) to perform promptly every obligation of the Airline under this Agreement until this Agreement is either assumed or rejected under the Federal Bankruptcy Code; (ii) to pay on a current basis all rentals, fees, and charges set forth in this Agreement; (iii) to reject or assume this Agreement within sixty (60) days of a filing of a petition under the Federal Bankruptcy Code; (iv) to cure or provide adequate assurance of a prompt cure of any default of the Airline under this Agreement; and (v) to provide to the City such adequate assurance of future performance under this Agreement as may be requested by the City, including a tender of a Performance Guarantee as set forth in Section 10.3 of this Agreement.

ARTICLE XII
CANCELLATION BY AIRLINE: EVENTS OF
DEFAULT BY CITY

Section 12.1 - Events of Default by City

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

12.1.A. City 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 City and such failure continues for thirty (30) days or if by its nature such Event of Default cannot be cured within such thirty (30) day period, if City shall not commence to cure or remove such Event of Default within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

12.1.B. City closes Airport to flights in general or to the flights of Airline, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within ninety (90) days from such closure.

12.1.C. The permanent closure of the Airport as an air carrier airport by act of any Federal, state or local government agency having competent jurisdiction.

12.1.D. The assumption by the United States Government or any authorized agency of the same (by executive order or otherwise) of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Airline from conducting its operations, if such restriction be continued for a period of ninety (90) days or more.

Section 12.2 - Remedies for City's Defaults

12-2.A. Upon the occurrence of an Event of Default by City, Airline shall have the right to suspend or terminate this Agreement and all rentals, fees and charges payable by Airline under this Agreement shall abate during a period of suspension or shall terminate, as the case may be. In the event that Airline's operations at the Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then Airline shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of a just proportion of the payments to become due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

12.2.B. City shall pay to Airline all costs, fees and expenses incurred by Airline in the exercise of an remedy upon an Event of Default by City.

ARTICLE XIII
SURRENDER OF AIRLINE PREMISES

Section 13.1 - Surrender and Delivery

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

-----*space below intentionally left blank*-----

Section 13.2 - Removal of Property

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

Section 13.3 - Holding Over

Should Airline use the Airline Premises without the written consent of City after this Agreement has terminated, Airline shall be deemed a tenant at sufferance during the period of such use and shall pay double the then current rentals, as well as any other applicable fees and charges hereunder. In such event, City shall have all of the remedies provided under applicable laws. Notwithstanding the foregoing, in the event the Airline shall holdover after it shall have received the written consent of City to such holding over, then and in such event such holding over by Airline after the termination of this Agreement shall not renew and extend same but shall operate and be construed as a tenancy from month to month.

ARTICLE XIV
ASSIGNMENT, SUBLETTING AND USE FEES

Section 14.1 - Assignment and Subletting by Airline

14.1.A. Airline shall not, directly or indirectly, assign, sell, hypothecate or otherwise transfer this Agreement, or any portion of Airline Premises, without the prior written consent of City which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas, provided that the foregoing shall not prevent the assignment of this Agreement to any corporation with which Airline may merge or consolidate, or which may succeed to the business of Airline, provided such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge by a writing satisfactory in form and content to City that it has assumed all obligations of Airline and will fully honor all the terms and conditions set forth in this Agreement.

14.1.B. Airline shall not without the prior written consent of Director sublease Airline Premises. The parties hereto agree that Director may reasonably withhold such consent if City has substantially similar space available but unleased or if City can make such space available for lease within a reasonable time. Exclusive use of Airline Premises, or any part thereof, by anyone other than Airline shall be considered a sublease.

14.1.C. In the event Airline requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement, if prepared. In the event such proposed sublease agreement has not been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with Airline's request for tentative approval by Director. The area or space to be subleased and the rental to be charged shall be specified and all other information reasonably requested by City pertaining to said sublease shall be promptly provided. A fully executed copy of such sublease shall be submitted to Director for final review no later than thirty (30) days following occupancy of Airline Premises, or any portion thereof, by the sublessee.

14.1.D. In the event of a sublease where the rentals, fees and charges for the subleased premises exceed the rentals, fees and charges payable by Airline for said premises pursuant to this Agreement, Airline shall pay to City as Gross Revenues the excess of the rentals, fees and charges received from the sublessee over that specified to be paid by Airline herein, provided that Airline may charge a reasonable fee for administrative costs, not to exceed 15% of the specified sublease rental, and such 15% shall not be considered excess rentals, fees and charges. Airline shall also have the right to charge a reasonable fee to others for the use of Airline's capital equipment and to charge for use of utilities and other services being paid for by Airline.

14.1.E. In the event Airline agrees to ground handle any portion of the operations of a Guest Airline, Airline shall use its best efforts to provide City advance written notice of such proposed activities, including a description of the type, extent, frequency and duration of the service to be provided. In such event, and with exception of landing fees, Airline shall be responsible to City for the payment of all fees and charges and the filing of all reports required on behalf of such Guest Airline. Further, and in the event that such Guest Airline shall not maintain in force and provide evidence thereof to City insurance of the types and in such amounts as required in Article X of this Agreement, Airline shall cause City to be named as an additional indemnitee in any agreement of indemnification provided by such Guest Airline to Airline and as an additional insured in all policies of insurance provided by such Guest Airline to Airline.

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

Section 14.2 – Assignment and Subletting Use Fee

14.2.1 Airline shall be entitled to charge other airlines a use fee for the use of its Exclusive Use or Preferential Use premises. The use fee shall not exceed (a) the rentals, fees and charges payable by Airline for said premises pursuant to this Agreement, (b) a reasonable charge for the use of Airline's capital equipment, utilities and other services prorated by Airline and (c) a reasonable fee for administrative costs, not to exceed 15% of items (a) and (b) above. In the case of a shared use with Airline the use fee shall be prorated over the planned number of uses by

Airline and others. The use fees shall be subject to the review and approval of the Aviation Director.

ARTICLE XV
ACCESS

Section 15.1 - Declaration of Intent

The parties acknowledge the objective of the City to offer to all airlines desiring to serve Airport access to the Airport and to provide adequate Gate Positions and space in the Terminal. Recognizing that physical and financial limitations may preclude timely expansion of the Terminal and Aircraft Parking Apron areas to meet the stated requests of Airline and/or such other airlines for additional facilities, City hereby states its intent to pursue the objective of achieving an optimum balance in the overall utilization of Terminal and Aircraft Parking Apron to be achieved, if necessary, through sharing and reassignment, from time to time, of Gate Positions and other Terminal facilities.

Section 15.2 – Accommodation of Requesting Airlines

15.2.A. Airline agrees to cooperate with City to accommodate the needs of a Requesting Airline on a temporary basis by permitting such Requesting Airline to utilize Airline's Gate Position(s) and other portions of Airline Premises and other necessary facilities in connection with and for the time period(s) necessary to permit passenger loading and unloading operations in conjunction with its scheduled operations at times when the use of such facilities shall not interfere with Airline's planned operations or those of its sublessees, licensees or permittees. City shall provide Airline with as much advance notice as reasonably possible so that Airline may plan for the accommodation of a Requesting Airline. Airline's obligation hereunder shall be subject to execution of a written agreement between Airline and such Requesting Airline setting forth mutually agreed to terms and conditions governing such use which shall include a charge by Airline for its prorata direct costs plus a reasonable administrative charge. Airline agrees to make all reasonable efforts to facilitate the temporary accommodation of Requesting Airline's scheduled operations, including use of ticket counter area, use of Airline's baggage facilities and the use of other portions of Airline Premises and facilities reasonably necessary to accommodate Requesting Airline upon Requesting Airline's request, if (1) Airline has adequate capabilities, capacity, facilities and personnel therefor, after taking into account Airline's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of Airline, and the need for labor harmony, and (2) said Requesting Airline enters into a written agreement with Airline therefor which agreement shall be approved in writing by City prior to the effective date thereof.

15.2.B. Subject to the provisions of Section 14.1.B, nothing contained in this Article shall prevent or prohibit Airline from electing to enter into an agreement with other air carriers authorized to operate into and out of the Airport and desiring the joint use of Airline Premises as provided in Article XIV herein.

15.2.C. During the period of use of Airline's facilities by a Requesting Airline at City's request pursuant to this Section, Airline shall be relieved of its obligation under this Agreement to indemnify and save harmless City, its officers, directors, employees or agents with regard to any claim for damages or personal injury arising out of or in connection with said accommodated Requesting Airline's use of Airline Premises unless such damage or personal injury is proximately caused by the negligence of Airline, its officers, directors, employees, agents or representatives who have come upon Airline Premises in connection with Airline's occupancy hereunder. The City shall require such Requesting Airline to indemnify City in the manner and to the extent required of Airline pursuant to Article X hereof.

Section 15.3 – Reassignment of Premises

15.3.A. In addition to any other rights of the City, the City may after the first anniversary of the effective date of this Agreement reallocate the Airline's Premises among the Signatory Airlines because of one or more of the following conditions:

- a) The need to provide Premises to a Signatory Airline which is without adequate Premises leased directly from the City due to the unavailability of such space;
- b) The impracticality of the City constructing additional Premises within a reasonable period of time; and
- c) The need for the City to manage aircraft and passenger activity at the Airport in order to correct an imbalanced use of Airport facilities, including Gate Positions, or to minimize or ameliorate congestion in the Terminal or at the curbside.

Such reallocation may result in a reduction of the Airline's Premises and/or cause the Airline to vacate Premises and relocate to other Premises. The reallocation of any Premises shall be in accordance with a utilization study conducted by the City that shall take into account the following factors, among others:

- a) Each Signatory Airline's number of enplaning and deplaning passengers;
- b) Each Signatory Airline's historical, current and reasonably projected frequency of operations;
- c) Each Signatory Airline's number of Gate Positions;
- d) Each Signatory Airline's linear feet of ticket counter space, square feet of holdroom space and square feet of other Premises;

15.3.B. In making such reallocation, the City shall give the Airline, along with the other Signatory Airlines, not less than sixty (60) days written notice of the proposed space reallocation together with the City's reasons for the reallocations. The Airline shall during the sixty (60) day period be entitled to respond to the proposed reallocations in writing. A final decision of the City shall be from the Aviation Director in writing and contain the basis thereof along with the effective date of any reallocations.

15.3.C. In implementing such reallocations, the City shall attempt to minimize disruptions to the Airline's operations and to preserve the operational integrity of the Airline's Premises during and after such reallocation.

15.3.D. If, as a result of a reallocation under this Section 15.3, the Airline is required to relocate all or a portion of its operations, or to consolidate its operations in its remaining Premises, the City shall determine the reasonable cost of such relocation or consolidation, including the unamortized cost of reallocated Premises and fixed improvements vacated by the Airline calculated on the basis of generally accepted accounting principles, and said costs shall be borne by the Signatory Airline gaining the use of the reallocated Premises, and shall be paid to the Airline.

15.3.E. Airline will not be required to operate with less than (a) one Gate Position, (b) four ticketing positions with a corresponding amount of ticketing office and outbound baggage area, and (c) operations areas adequate to support its planned number of flights. If, as a result of a reallocation under this Section 15.3, the Airline is required to consolidate its premises to less than seventy-five percent (75%) of the total amount of square feet prior to the consolidation, then Airline, provided that it is not otherwise in default of this Agreement, may elect to terminate this Agreement upon giving sixty (60) days prior written notice. If Airline is required to relinquish (a) one or more gates or (b) four or more ticketing positions, then Airline will be entitled to also relinquish to City a proportionate amount of the remainder of Airline premises.

ARTICLE XVI **SUBORDINATION AND SAVINGS CLAUSE**

Section 16.1 - Subordination

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

Section 16.2 - Savings

This Agreement is the result of extensive negotiations between the parties and shall not be construed against City by reason of the preparation of this Agreement by City.

ARTICLE XVII **GOVERNMENT INCLUSION**

Section 17.1 - Federal and Other Governmental Authority Funds

This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States government, or other governmental authority, relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal funds or other governmental authority funds for

the development of Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds. City 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.

Section 17.2 - Nondiscrimination

17.2.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, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of Airline Premises; (2) in the construction of any improvements on, over, or under Airline Premises and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) Airline shall use 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 and in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended; (4) Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. Airline shall comply with laws of the State of Texas prohibiting discrimination on the basis of sex, religion, age or physical disability. Should the Airline authorize another person, with City'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 paragraph. Airline shall furnish a copy of such agreement to City prior to said authorization.

17.2.B. In the event the breach of any of the above nondiscrimination covenants shall constitute an Event of Default by Airline, City shall have the right to terminate this Agreement and to reenter and repossess the Airline Premises and the facilities thereon and hold the same as if this Agreement had never been made or issued. The right granted to City by the foregoing sentence shall not be effective until applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

-----*space below intentionally left blank*-----

Section 17.3 - SMBE Program

In respect to its operations at the Airport and to goods and services purchased at or for such operations at the Airport, Airline shall use its best efforts to conform to the City's Small and/or Minority Business Enterprise (SMBE) Program and, upon request, to furnish to City documentation as City shall reasonably require to verify such purchases and such good faith efforts.

ARTICLE XVIII **MISCELLANEOUS PROVISIONS**

Section 18.1 - Rights Non-Exclusive

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

Section 18.2 - Airport Security

Airline and City shall comply with all applicable regulations 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 Area of the Airport. Further, if the City is deemed to be in non-compliance with laws or regulations governing access to secure areas of the Airport and said non-compliance is the result of or due to the negligence or willful act or omission of the Airline or of any of the Airline's employees, agents, or contractors and such breach results in a civil penalty action against the city, the Airline promptly following receipt of written demand from City agrees to reimburse the City for all expenses, including reasonable attorney fees, incurred by the City in defending against the civil penalty action and for any civil penalty or settlement amount paid by the City as a result of being deemed in non-compliance. The City shall give the Airline reasonable notice of any allegation, investigation, or proposed or actual civil penalty sought for such non-compliance.

Section 18.3 - Avigation

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

Section 18.4 - Height Limitations

Airline expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Airline Premises to such a height so as to

comply with Federal Aviation Regulations, Part 77, as such may be amended or replaced from time to time.

Section 18.5 - Amendment

This Agreement, together with the authorizing City ordinance, constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of the Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

Section 18.6 - Nonwaiver of Rights

No waiver of default by either party of any of the terms, covenants, and conditions herein to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 18.7 - Severability

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

Section 18.8 - Governing Law

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

Section 18.9 - Compliance with Law

Airline agrees to observe and comply with all applicable current and future Federal, State, and municipal laws, statutes, ordinances, and regulations, including such ordinances, resolutions, and rules and regulations as City may from time to time promulgate or adopt relative to the use of any property owned by City, including the premises that are the subject of this Agreement and the conduct of persons in, on, and about such City property in order to preserve such property and to protect the public health, safety, and welfare; provided, however, that Airline may, at its own risk, costs, and expense and at no cost to City, contest by appropriate judicial or administrative proceedings the applicability or the legal or constitutional validity of such law, statute, ordinance, resolution, rule or regulation.

Section 18.10 - Agent for Service of Process

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

Section 18.11 - Nonliability of Agents and Employees

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

Section 18.12 - Partnership or Agency

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

Section 18.13 - Successors and Assigns Bounds

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

Section 18.14 - Other Agreements

Other than as set forth in Section 19.2 hereof, nothing contained in this Agreement shall be deemed or construed to nullify, restrict or modify in any manner the provisions of any other lease or contract between City and Airline authorizing the use of the Airport, its facilities and appurtenances upon payment of rentals, fees and charges therein provided.

Section 18.15 - Taxes, Assessments, and Licenses

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

Section 18.16 - Approval by City

Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval of the Director or the City Manager of the City of San Antonio or his designee. Any approval required by either party to this Agreement shall not be unreasonably withheld or delayed.

Section 18.17 - Conformity

City covenants and agrees not to enter into any Agreement with or grant to any Scheduled Air Carrier which makes substantially similar use of the Airport, which operates substantially similar aircraft, and which utilizes substantially similar facilities to that of Airline, which contains more favorable terms than this Agreement, or to grant to any such Scheduled Air Carrier rights or privileges with respect to Airport which are not accorded to Airline hereunder unless the same terms rights, privileges and facilities are concurrently made available to Airline.

Section 18.18 - Compliance By Other Tenants

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

Section 18.19 - Quiet Enjoyment

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

Section 18.20 - City's Right of Entry

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

-----space below intentionally left blank-----

Section 18.21 - Force Majeure

Except as herein provided, neither City nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations other than the payment of rentals, fees and charges hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control. Under no circumstances shall the happening of any event provided for in this Section 18.21 excuse Airline from paying the rentals, fees and charges payable to City by Airline, pursuant to the terms of this Agreement during the term of this Agreement.

Section 18.22 - Gender

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

Section 18.23 - Headings and Titles

The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 18.24 - Incorporation of Exhibits

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

Section 18.25 - Notices

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

Director of Aviation		City Clerk
San Antonio International Airport	and to	P.O. Box 839966
9800 Airport Boulevard		San Antonio, TX 78283-3966
San Antonio, TX 78216		

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

U.S. Airways, Inc.

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

Section 18.26 - Place of Payment

All payments required of Airline by this Agreement shall be made at the office of the Director of Aviation, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Texas 78216, or to such other officer or address as may be substituted by City therefore.

Section 18.27 - Capacity to Execute

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

Section 18.28 - Entire Agreement

18.28.A. It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Airline that City and City's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Airline against City for, and City shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parole agreement with City being expressly waived by Airline and it being understood that the Charter of the City requires all agreements with the City to be in writing and adopted by ordinance.

18.28.B. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

18.28.C. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

-----*space below intentionally left blank*-----

ARTICLE XIX
COMMENCEMENT PROVISIONS AND
EFFECTIVE DATE

Section 19.1 - Effective Date

This Agreement is binding upon the parties when executed by both Airline and City.

Section 19.2 - Commencement Provisions

19.2.A. The understandings agreements, rights and obligations set forth in this agreement in each and all of its Articles, including the provisions with respect to rentals, fees and charges payable by Airline, shall commence at 12:01 a.m. on October 1, 2001 ("Commencement Date").

19.2.B. Prior to the Commencement Date as set forth in Paragraph 19.2.A. above, the understandings, agreements, rights and obligations of the parties hereto with respect to the leased premises and the use of the Airport shall be as set forth in any existing agreements between Airline and City.

IN WITNESS WHEREOF, the parties hereto have executed this Airline-Airport Use and Lease Agreement this the _____ day of _____, 20__.

U.S. AIRWAYS, INC.

CITY OF SAN ANTONIO

By: _____
Signature

By: _____
Sheryl Sculley, City Manager

Printed Name

ATTEST:

Printed Title

City Clerk

Federal Tax ID No.

ATTEST:

APPROVED:

City Attorney