

**PRESCOTT REGIONAL AIRPORT
PRESCOTT, AZ**

**Airline Operating Agreement
and Terminal Building Lease**

Effective AUGUST 29, 2018 – AUGUST 30, 2020

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PRESCOTT REGIONAL AIRPORT
AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE

This Airline Operating Agreement and Terminal Building Lease (the "Agreement"), is made and entered into as of this 29th day of August, 2018 (the "Effective Date") by and between the City of Prescott, (the "City"), and SkyWest Airlines, Inc., a corporation organized and existing under the laws of the State of Arizona ("Airline").

W I T N E S S E T H:

WHEREAS, the City recognizes commercial air service is critical to the local community and economic development of Prescott and its surrounding communities and encourages increased commercial air service and growth in the region; and

WHEREAS, the City owns and operates the Prescott Regional Airport (the "Airport") located in the City of Prescott and County of Yavapai in the State of Arizona and has the right to lease portions of the Airport and to grant operating privileges thereon subject to the terms and conditions hereinafter set forth; and

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

WHEREAS, the Airline desires to lease certain premises within the Airport terminal building and adjacent areas, use certain facilities at the Airport, and acquire certain rights and privileges from the City in connection with its use of the Airport, and the City is willing to lease and grant the same to the Airline under the terms and conditions hereinafter stated; and

WHEREAS, the City has the power and City to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and considerations herein contained, the City and the Airline agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions

The terms and phrases defined in this Article 1 for all purposes of this Scheduled Airline Operating Agreement and Terminal Building Lease shall have the following meanings.

- (A) **"Affiliate Airline"** shall mean any air transportation company that (i) is a parent or subsidiary of Airline, or (ii) operates at the Airport under Airline's trade name and uses Airline's two-letter designator code for its flights serving the Airport, or (iii) operates at the Airport using a trade name of a parent or subsidiary of Airline and uses the two-letter designator code of such parent or subsidiary for its flights serving the Airport.
- (B) **"Air Transportation"** shall mean the carriage of persons, property, cargo, and mail by aircraft.
- (C) **"Airline's Authorized Representative"** shall mean such person designated by Airline to the Airport Director from time-to-time during the term hereof setting forth the name and title of such person.
- (D) **"Airport"** shall mean the Prescott Regional Airport, as it now exists as shown on Exhibit A, attached hereto, and incorporated herewith, as the same may be amended from time-to-time.
- (E) **"Airport Director"** shall mean the Airport Director of Prescott Regional Airport or person of authority over the airport as designated by the City.
- (F) **"Airport Purpose"** shall mean any action or undertaking by the City directly relating to the development and preservation of the Airport for air commerce.
- (G) **"Airport Revenue"** shall mean any income and revenue lawfully derived directly or indirectly by the City from the operation and use of, or otherwise relating to, the Airport. The term does not include any grants, passenger facility charges, appropriations, loans, gifts or bond proceeds from federal, state or local governments.
- (H) **"Department of Homeland Security (DHS)"** shall mean the agency established by the Federal government for the administration of Airport security or its successor organization.
- (I) **"Exclusive Use Space"** shall mean, at any time, the space leased by the City to the Airline on an Exclusive Use basis as more fully set forth on Exhibit B, C, and D attached hereto, and incorporated herewith, as the same may be amended from time-to-time.
- (J) **"FAA"** shall mean the Federal Aviation Administration of the U.S. Government or any federal agency succeeding to all or part of its jurisdiction.
- (K) **"Fuel Flowage Fee"** is a fee imposed by the airport operator per unit (gallons) of aviation gasoline or jet fuel sold at the airport.

- (L) **“Force Majeure”** shall mean factors or circumstances beyond the reasonable control of that party, whether or not foreseeable, such as strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, state, federal or municipal government or de facto governmental action (unless caused by acts or omissions of Airline), acts of God, acts of the public enemy, weather conditions, riots, rebellion, sabotage, war, terrorism or a default or failure to perform by the other party hereto.
- (M) **"Gross Landing Weight"** means the maximum allowable gross landing weight of aircraft operated by Airline at the Airport as certified by the FAA.
- (N) **"Joint Use Formula"**
- a) Air Carrier Only Joint Use Spaces - shall mean the formula used to prorate the percent (%) of the specified total expenses according to the ratio of the number of each airline's enplaning passengers at the Airport (from the most recent calendar quarter) to the total number of enplaning passengers of all airlines during that same calendar quarter. The percent of total expenses in joint use areas will be prorated among all airlines operating in the passenger terminal based on the formula.
 - b) Mixed Use (Airline and Non-Aero) Joint Use Space - shall mean the formula used to prorate the percent (%) of the specified total expenses. The Mixed Use Common Space ratio allocates one-half of the space cost to Airlines (as split amongst all Airlines using the above Air Carrier Joint Use formula) and allocates one-half of the space costs to non-Airline tenant users (for example, the car rental agency).
- (O) **"Joint Use Space"** shall mean, at any time, the premises leased or used jointly by Airline and one or more other airlines (if any), as more particularly set forth on Exhibit B, as the same may be amended from time-to-time.
- (P) **“Landing Fees”** shall mean those amounts payable by Airline pursuant to Article 6 hereof, which shall be payable with respect to each 1,000 pounds of Gross Landing Weight as certified by the FAA, for actual landings of aircraft operated by Airline including Airline’s designated Affiliate Airlines at the Airport; provided that, however, Landing Fees shall not be payable when aircraft return to the Airport due to adverse weather conditions, mechanical problems or other emergency or precautionary reasons, test flights or other non-revenue flights.
- (Q) **"Passenger Facility Charge" or "PFC"** shall mean any passenger facility charge which the City may impose upon passengers enplaning at the Airport pursuant to 14 CFR Part 158, as it may be amended or superseded from time-to-time.
- (R) **"Premises"** shall mean Exclusive Use Space and Joint Use Space leased by Airline.
- (S) **"Requesting Airline"** shall mean an airline requesting the use of space at the Airport in order to provide new or increased commercial air transportation services at the Airport or to provide a change of aircraft for existing service for which the airline does not have the use of appropriate facilities at the Airport.

(T) **"Rules and Regulations"** shall mean all applicable and validly enacted ordinances and reasonable rules and regulations of governmental entities with jurisdiction to promulgate the same, whether now existing or hereafter enacted, with respect to the use and occupancy of the Airport and the operation and control of the Airport, provided that such rules and regulations shall not be inconsistent with the terms hereof or the rules and regulations of any governmental body with jurisdiction over the Airport or the operations thereof.

Section 1.2 Construction of Certain Words

Words used in this Agreement may be construed as follows: Number-words used in the singular include the plural, and words used in the plural include the singular.

ARTICLE 2
TERM

Section 2.1 Term and Option

The Term of this Agreement (the "Term") shall commence on the Effective Date August 29, 2018 and shall continue through August 30, 2020, subject to earlier termination in accordance with the provisions of this Agreement. In the event that the Essential Air Service Program under which the Prescott Regional is operating is cancelled, including cancellation by Airline, or the contract is not awarded to Airline following execution of this Agreement and during the Term of this Agreement, the contract may be cancelled notwithstanding Article 11 by either party without cause following the termination of service by Airline to the Airport. The City and the community waive the right to hold-in Airline upon issuance of a 120 days notice to terminate service. Airline will be responsible for all obligations under the terms of this Agreement prior to the termination date.

Section 2.2 Holding Over

If Airline remains in possession of the Premises after the termination of this Agreement, such holding over shall not be deemed as a renewal or extension of this Agreement, but shall create only a tenancy from month to month under the terms and conditions set forth herein at rates reasonably determined by the City in compliance with all applicable FAA rules and regulations.

ARTICLE 3
RIGHTS AND PRIVILEGES

Section 3.1 Use of the Airport

Airline, designated Affiliated Airlines and their respective employees, contractors, subcontractors, passengers, guests, patrons, and invitees shall have the right to the use (in common with other duly authorized users) of the Airport and its appurtenances, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for common use at, or in connection with, the Airport, subject to the Rules and Regulations in effect which may be reasonably modified from time to time. Airline shall be responsible for ensuring that all of its designated Affiliate Airlines operating at the Airport pursuant to this Agreement comply with the terms and conditions of this Agreement.

Section 3.2 Specific Rights of Airline at the Airport

Airline, together with its designated Affiliate Airlines, employees, passengers, patrons, invitees, suppliers, contractors and service providers shall have the right, in common with other persons and entities to whom similar rights are granted, to use the Airport for the operation of a transportation system by aircraft for the carriage of persons, property, cargo and mail, and any other legal use related to Airline's business, including but not limited to the following activities:

(A) Airline has the right to repair, condition, tow, park and store (temporary or by emergency) Airline's aircraft and other equipment in such spaces and in such manner as may be prescribed by the Airport Director.

(B) Airline has the right to perform training of personnel, except primary flight training, as well as to conduct courtesy and charter flights and test its aircraft and other equipment, it being understood that such training, testing, courtesy, and charter flights shall be incidental to the operation of Airline's Air Transportation system.

(C) Airline has the right for the occasional sale, disposal or exchange of Airline's aircraft, engines, accessories, gasoline, oil, greases, lubricants, and other equipment, fuel, or supplies; provided, however, that such right shall not be construed as authorizing the conduct of a separate business by Airline, but shall permit Airline to perform such function as incidental to its operation of an Air Transportation system, and specifically, but without limitation, shall permit the sale or disposal of any article or goods used by, or brought for use by Airline in connection with its operation of an Air Transportation system.

(D) Airline has the right to service its aircraft at locations designated by the Airport Director with gasoline, oil, glycol, greases and other fuel and lubricants, equipment and supplies, in addition to other equipment by truck or otherwise.

(E) Airline has the right to land, take off, taxi, load and unload its aircraft or other equipment, and the loading and unloading of aircraft or other equipment of any other Air Transportation company, provided that such right shall be exercised only in conformity with such rules and regulations as may be reasonably adopted from time to time by City in the interest of safety, and Airport efficiency for all users thereof.

(F) Subject to the City's prior review and approval, Airline shall have the right to install, maintain, and operate at its own expense, radio, communication, meteorological, aerial navigation equipment, facilities, fax and wireless communication equipment, telephone, teletype or telemeter systems, trade fixtures, and air conditioning units in its Exclusive Use Space pursuant to this Agreement. Further, subject to the City's prior review and written approval, Airline may from time to time repair, alter, and improve all or any part of the Exclusive Use Space in the Airport leased or assigned to Airline hereunder and may install partitions, counters, fixtures, and other improvements in such space; provided that any such repair, alterations, or improvements shall reasonably conform to the general interior architectural design and finish of the Airport. Further, Airline agrees they will provide structural diagrams at their own cost prior to receiving City's approval.

(G) Airline shall be entitled to remove all aircraft, tools, machinery, equipment, and trade fixtures placed, installed, or constructed thereon by it; provided, however, that all buildings from which any property is so removed shall be restored by Airline in such manner that such buildings are not materially damaged by any such removal, normal wear and tear excepted. Airline shall have the right, but not the obligation, to, within the sixty (60) day period following the expiration or earlier termination as provided for in this Agreement, to remove all equipment, fixtures, improvements, and systems installed or constructed by Airline on the Airport. Unless otherwise agreed by the City and Airline, said structures, improvements, alterations or additions not removed by Airline shall become part of the realty upon which they are erected and title thereto shall vest at no cost to the City.

(H) Airline, in conjunction with the exercise by it of any of the rights and powers granted to it hereunder, shall have full right to procure at the Airport or elsewhere all materials, fuel, parts, equipment, food, supplies, services and products from any person or entity of its own choice, and no additional charges, fees, or tolls shall be charged by Airline, directly or indirectly, against Airline for any right or privilege granted to Airline by this Agreement.

(I) Airline has the non-exclusive use, in common with others so authorized, to provide to the public a scheduled air carrier service at the Airport subject to reasonable, nondiscriminatory and uniformly applied rules and regulations regarding the use of such facilities.

(J) Airline has the right to identify and advertise its scheduled air carrier service at its ticket counter.

Section 3.3 Limitations on Use by Airline

In connection with the exercise of its rights under this Agreement, Airline shall not:

(A) Do, or permit to be done, with Airline's knowledge, anything within its control at or about the Airport that may interfere with the effectiveness or accessibility of the drainage and sewage system, water system, electrical system, heating system, natural gas system, air conditioning system, fire protection system, sprinkler system, alarm system, or fire hydrants and hoses, if any, installed or located on or within the premises of the Airport.

(B) Do, or permit to be done, with Airline's knowledge, upon the Airport any act or thing within its control that will invalidate or conflict with any fire or other casualty insurance policies (copies of which, together with premium schedules, shall be furnished to Airline on request) covering the Airport or any part thereof.

(C) Dispose of, or permit any other person within its control (including service contractors) to dispose of, any waste material taken from, or products used (whether liquid or solid) except in accordance with all applicable environmental laws with respect to, its aircraft into the sanitary or storm sewers at the Airport.

(D) Keep or store within the enclosed portion of the premises, during any twenty-four (24) hour period, flammable liquids in excess of Airline's working requirements during said 24 hour period, except in storage facilities specially constructed for such purposes in accordance with standards established by the

National Board of Fire Underwriters, and approved by the Airport Director from the standpoint of safety.

(E) Do, or permit to be done, upon the Airport any act or thing within its control that will be in conflict with Federal Aviation Regulations Part 139 or jeopardize the Airport's operating certificate.

(F) Do, or permit to be done, any act or thing within its control in conflict with the Airport's or the Department of Homeland Security's Airport Security Program.

(G) To the extent within Airline's control, do or permit to be done any act, or let any condition exist, which is in conflict with Environmental Protection Agency rules, regulations or directives.

ARTICLE 4 **PREMISES**

Section 4.1 Terminal Building Area Space

(A) Airline hereby leases the following areas (hereinafter referred to as Airline's "Exclusive Use Space" and "Joint Use Space") in the Terminal Building Area (including designated aircraft gates and passenger loading bridges) being more particularly delineated on Exhibit B, as the same may be amended from time-to-time:

- Exclusive Use Space:
Airline Offices, Airline Ticket Counter, Airline Breakroom, Passenger Kiosk

- Joint Use Space – Airline Users Only:
Baggage Makeup Area, Baggage Claim Area, and Gate (Passenger) Hold Area. Gate 1 will be the primary gate for all commercial activity. Gate 2 will be used only in the event that Gate 1 is not available.

- Joint Use Space - Mixed Use (Airline, Non-Aeronautical Revenue Users)
Passenger Main Terminal Seating. Cost will be allocated fifty percent (50%) to Airlines according to the Joint Use Formula for Airline Spaces and fifty percent (50%) to other Airport tenants.

(B) Airline or any Affiliate Airline shall use its Exclusive Use Space and Joint Use Space for the purposes set forth in Section 3.2 hereof in the conduct of its Air Transportation business or on behalf of any other Air Transportation company authorized by the Airport Director to use the Airport.

(C) The City shall designate area(s) within the Airport to be used by agencies of the United States government, including the Department of Homeland Security, for the inspection of passengers and their baggage and the required support functions, and for the exercise of other governmental activities with respect to the movement of persons and property into and out of the United States. These areas may be subject to change from time to time.

Section 4.2 Surrender of the Premises

Subject to Section 3.2(G) hereof, upon termination of this Agreement, Airline's rights herein shall cease, and Airline shall immediately surrender the Premises to the City, normal wear and tear, casualty damage and approved alterations excepted.

Section 4.3 Accommodation of Requesting Airline

The parties hereto agree that reasonable efforts will be made to accommodate a Requesting Airline in the ticket counter portion of the Joint Use Space. The parties agree that the City will make every effort to accommodate such Requesting Airline without any impact on Airline through direct lease of premises between the City and the Requesting Airline. In the event no premises which will accommodate the Requesting Airline are available for lease from the City, the parties hereto recognize that it may become necessary to share the use of the Joint Use Space with the Requesting Airline so as to reasonably accommodate new and/or additional Air Transportation service at the Airport. Airline shall have priority rights to the Joint Use Space and will not be required to modify Airline's schedule or that of any designated Affiliated Airline in order to accommodate a Requesting Airline. However, Airline agrees to cooperate with City by allowing the City to accommodate such Requesting Airline in the Joint Use Space; provided, however, the Requesting Airline shall enter into an Agreement to indemnify the City and Airline in connection with the Requesting Airline's use of the Joint Use Space, and shall provide proof of insurance which shall name Airline and the City as additional insureds. The terms of indemnification and the required insurance shall be comparable to those set forth in Article 9 hereof.

Section 4.4 Remodeling and New Construction

The City reserves the right to provide access to the Joint Use Space to a Requesting Airline.

Section 4.5 Access

(A) Subject to the provisions hereof, the Rules and Regulations, and such restrictions as Airline may impose with respect to its Exclusive Use Space and Joint Use Space, the City hereby grants to Airline, Airline's designated Affiliate Airlines and their respective agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of access, ingress, and egress to the public areas and public facilities of the Airport, together with all improvements, facilities and equipment now or hereafter located thereon. The public areas shall be in the possession and control of the City and shall at all times remain public property to be used only as public Airport facilities, except as may be otherwise provided herein.

(B) The ingress and egress provided for in Section 4.5(A). above shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that is not incidental to Airline's and any of Airline's designated Affiliate Airline's Air Transportation business.

(C) The City shall have the right at any time to close, relocate, reconstruct, change, alter, or modify any such means of access, ingress, and egress provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall use its best efforts to limit such closing to the duration appropriate to the circumstances. The City shall consult with Airline prior to any such closing which would adversely affect Airline's operations unless such closing is necessitated by circumstances that pose an immediate

threat to the health or safety of persons using the Airport. The City shall suffer no liability by reason thereof, and such action shall in no way alter or affect any of Airline's obligations under this Agreement.

ARTICLE 5
AIRPORT CAPITAL IMPROVEMENTS

Section 5.1 Airport Capital Improvement Program

The parties hereto recognize that capital development of the Airport may be required during the term of this Agreement to preserve, protect, enhance, expand, or otherwise improve the Airport or any part thereof. If the City determines to undertake an Airport capital improvement (which shall include any project with a cost net of federal and state funding greater than \$1,000,000) during the term of this Agreement the Airport Director, prior to undertaking construction of such capital improvement, shall: 1) convene a meeting of all Airlines to inform them of (a) the costs of such capital improvement, (b) the source(s) of funds to pay for the project and (c) the project's estimated impact, if any, to the Airlines' cost to conduct their Air Transportation business at the Airport; and, 2) endeavor to obtain Airline consensus to proceed with the project prior to undertaking any expenditures related to the proposed capital improvement, provided, however, that the lack of consensus by Airlines shall not preclude the City from undertaking such project(s).

ARTICLE 6
RENTALS AND FEES

Section 6.1 Consideration

In consideration of the rights and privileges granted under this Agreement, Airline agrees to pay the City, without deduction or setoff, during the term of this Agreement, certain rentals and fees as set forth herein commencing on the Effective Date.

Section 6.2 Landing Fee Charges

(A) Airline shall provide to the City by the twentieth (20th) day of the month following the end of each calendar month a copy of its actual monthly landed weight report for the previous month, including the number of landings of all designated Affiliate Airlines by aircraft types, Gross Landed Weight, total landed weight, enplaned and deplaned passengers, and the pounds of freight carried.

(B) Airline shall pay the City the Landing Fees for all actual landings of Airline's and designated Affiliate Airline's aircraft for the previous month in accordance with the rates set forth in Exhibit C, attached hereto, and incorporated herewith, as the same may be amended from time-to-time. Payment of amounts owed hereunder will be due within thirty (30) days of the date that the actual monthly landed weight report was submitted; and, shall be done by self-invoicing by the Airline.

(C) Reports for landings should be provided either:

- (1) By mail to:
Robin Sobotta, Ph.D., Airport Director
Prescott Regional Airport
6546 Crystal Lane
Prescott, AZ 86301

- (2) Or by Email to: robin.sobotta@prescott-az.gov and kathi.schmier@prescott-az.gov or as notified if personnel change.

Section 6.3 Rentals for Exclusive Use Space and Joint Use Space:

Airline shall pay to the City in advance, on the first day of each month, rentals for Airline's Exclusive Space and Joint Use Space, at the rates and in the amounts calculated in accordance with the rates outlined in Exhibit C. Rental charges listed in Exhibit C are subject to adjustment in accordance with the provisions of Exhibit C.

Section 6.4 Other Charges

If the City provides services requested by Airline in writing for which reimbursement is required, the direct cost for those services will be due and payable within thirty (30) days after receipt of an invoice therefore on a monthly basis. Charges/fees listed in Exhibit C are subject to adjustment in accordance with the provisions of Exhibit C.

Section 6.5 Partial Month Charges

In the event the beginning or termination date with respect to any of the Leased Premises, facilities, rights, licenses, services, or privileges as herein provided falls on any day other than the first day of a calendar month, the applicable rentals, fees, and charges for that month shall be paid for said month on a prorated basis according to the number of days during which said particular premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

Section 6.6 Late Payments

In the event Airline fails to make payment within ten (10) days of the dates due as set forth in this Article 6, then Airline shall pay and the City may charge to Airline, a late payment fee of fifty dollars (\$50.00), and if Airline fails to make payment within ten (10) days after written notice from the City to Airline that such payments are late, Airline shall also pay reasonable administrative costs and attorneys' fees incurred by the City in attempting to obtain payment and shall be considered in Default under the terms of Article 11 of this Agreement.

Section 6.7 Passenger Facility Charges

The City reserves the right to assess and collect Passenger Facility Charges (PFC)s subject to terms and conditions and such methods of collection set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the "PFC Act"), as may be amended from time to time. PFCs may be used to fund the local share of projects for which Airport Improvement Program grants are received by the City and no depreciation or amortization charges for eligible construction costs funded from the proceeds of a PFC shall be included in the determination of rates for Airline rentals and fees. The Airline through which ticketing is accomplished shall be responsible for collecting and holding all PFCs due and payable from its operation and those of any designated Affiliate Airline(s).

Section 6.8 Miscellaneous

The City may assess reasonable and non-discriminatory charges for miscellaneous facilities, activities, items or services provided to, or performed for Airline by the City, but only if such charges, facilities, activities, items or services are not specified in this Agreement and are agreed to in writing by Airline or its designated Affiliate Airline.

Section 6.9 Information to be Supplied by Airline

The acceptance by the City of any Airline payment shall not preclude the City from verifying the accuracy of Airline's reports on which Airline's rentals, fees, and charges are based, and shall not be construed as a waiver of late payment penalty due on full or partial underpayment, if any.

ARTICLE 7
MAINTENANCE, REPAIR, ALTERATIONS, AND IMPROVEMENTS

Section 7.1 Airline's Responsibilities

Airline shall have the following maintenance and repair obligations:

(A) Airline agrees that, upon the effective date of this Agreement, or Airline's occupancy of its Exclusive and Joint Use Space, such space is in an "as is where is" condition unless otherwise noted in writing to the Airport Director. In the event Airline surrenders space prior to the expiration or upon termination as called for in this Agreement, Airline shall restore the space to its original condition, normal wear and tear, casualty damage and approved alterations excepted.

(B) The City, except as hereinafter provided, shall not be required to provide janitorial services or nonstructural repairs to its Exclusive Use Space and Airline shall, at its sole expense and in a manner reasonably acceptable to the City:

- (1) Maintain its Exclusive Use Space in reasonably good, tenantable condition, normal wear and tear and casualty damage excepted, and in compliance with all applicable laws, Rules and Regulations.
- (2) Maintain the aircraft ramp area in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from its operations; and remove from its aircraft parking positions, all oil, fuel, and grease spillage that occurs in violation of applicable environmental laws attributable to Airline's operations.
- (3) Perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and nonstructural repair of all Exclusive Use Space, personal property, and equipment.
- (4) Immediately repair any damage, subject to Section 8.5 hereof, in any other space at the Airport occasioned by the fault or negligence of Airline, its servants, agents, employees and licensees.

(C) Except as may be caused by the negligence or willful misconduct of the City, its agents, servants, employees, or those under its control, Airline expressly agrees that the City shall not be liable to Airline, its employees, agents, passengers, or business visitors for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, acts of terrorism, or acts of civil City.

(D) If Airline fails to perform its obligations under this Article 7 and such failure continues after receipt of not less than sixty (60) days prior written notice from the City, the City may do so and recover the actual cost incurred from Airline as additional rent on the next rental due date.

Section 7.2 City's Responsibilities

(A) The City, during the term of this Agreement, shall retain FAA Airport Certification and keep in good repair, or arrange for the operation, janitorial, maintenance, and reasonably good repair of, all areas and facilities of the Airport except as specifically otherwise assigned by this Agreement, including, but not limited to, the public areas and the Joint Use Space of the Terminal Building, vehicular parking areas, runways, landing lights, floodlights, beacons and other field lighting, taxiways, aprons, aircraft parking area striping, roadways, and all appurtenances, facilities, and services now or hereafter connected with the foregoing. The City also shall keep the Airport reasonably free from obstructions, including, without limitation, vegetation, stones, and other foreign matter, as reasonably necessary, from the landing area, ramp area, taxi area, roadways, vehicular parking areas, and aircraft parking areas for the safe, convenient, and proper use of the Airport by Airline.

(B) The City shall operate and maintain the Airport in a reasonably prudent manner and in accordance with the rules, regulations and orders of any Federal, State, or local agency having jurisdiction with respect thereto.

(C) The City shall maintain the exterior portions of the walls and roof of the Exclusive Use Space, and Joint Use Space and all central mechanical distribution systems in good repair and condition.

(D) The undertakings by the City under this Section 7.2 do not relieve Airline of its duties to maintain any Leased Premises as specified in Section 7.1 and to use Joint Use facilities with due care.

(E) The City shall use its best efforts to keep the Airport open and in operation for landings and take-offs of aircraft of any type designed to use facilities similar to those at the Airport. In such regard, the City shall employ or cause to be employed construction, reconstruction and repair techniques (including supervision and construction management) which will minimize Airport operational delays or disruptions reasonably expected to result from such construction, reconstruction or repair, including any future projects, including but not limited to coordination with affected Airline's representatives or its designee.

(F) The City covenants and agrees not to enter into any lease, contract, or agreement with any other airline with respect to the Airport containing more favorable terms than this Agreement or to grant to any other airline rights, privileges, or concessions with respect to the Airport which are not accorded to Airline unless the same terms, rights, privileges, and concessions are concurrently made available to Airline.

Section 7.3 City's Right to Inspect and Make Repairs

The City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right (at such time and upon reasonable notice to Airline as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable) to enter Airline's Premises for the following purposes:

- (A) to inspect such space to determine whether Airline has complied and is complying with the terms and conditions of this Agreement;
- (B) to accomplish repairs or replacements by the City pursuant to Section 7.2, or in any case where Airline is obligated to make repairs or replacements and has failed to do so, after notice as provided herein, make such repairs or replacements on Airline's behalf, and
- (C) in the exercise of the City's police and fire fighting powers.

ARTICLE 8
DAMAGE or DESTRUCTION TO PREMISES

Section 8.1 Minor Damage

If any part of Airline's Premises, or adjacent facilities directly and substantially affecting the use of Airline's Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render any portion of the Premises untenable, the same shall be repaired to usable condition with due diligence by the City as provided in Section 8.4.

Section 8.2 Substantial Damage.

If any part of Airline's Premises, or adjacent facilities disrupts Airline's use of Airline's Premises in a manner as to render any portion of said Premises untenable but capable of being repaired, the same shall be repaired to usable condition with due diligence by the City as provided in Section 8.4. In such case, the rentals payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the part of the area rendered untenable bears to total Premises of the same category and area. Such abatement in rent will continue until such time as such affected Premises shall be restored adequately for Airline's use. The City shall use its best efforts to provide alternate facilities to continue Airline's operation while repair, reconstruction or replacement is being completed, at a rental rate not to exceed that provided in this Agreement for comparable space. In the event Airline's Premises are not reasonably expected to be repaired or replaced within ninety (90) days after such damage, Airline shall be entitled to terminate this Agreement.

Section 8.3 Total Damage

(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 Premises incapable of being repaired, as reasonably determined by the City, the City shall notify Airline within a period of ninety (90) days after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected 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.

(B) In the event the City elects to reconstruct or replace affected Airline Premises, the City shall use its best efforts to provide alternate facilities to continue Airline's operation while repair, reconstruction or replacement is being completed, at a rental rate not to exceed that provided in this Agreement for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Airline shall have the right, upon giving the City thirty (30) days advance written notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Airline Premises, unless such damaged or destroyed premises prevent Airline from operating at the Airport.

(C) In the event the City elects not to reconstruct or replace affected Airline Premises, the City shall meet and consult with Airline on ways to temporarily or permanently provide Airline with adequate replacement space for affected Airline Premises. Airline shall have the right, upon giving the City thirty (30) days advance written notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Airline Premises, unless the loss of such premises prevents Airline from operating at the Airport.

Section 8.4 Scope of Restoration of Premises

(A) The City's obligations to repair, reconstruct, or replace affected premises under the provisions of this Article 8 shall in any event be limited to using due diligence and commercially reasonable best efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited to the extent of insurance proceeds available to the City for such repair, reconstruction, or replacement. Airline agrees that if the City elects to repair, reconstruct, or replace affected premises as provided in this Article 8, then Airline shall proceed with reasonable diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment and other items provided or installed by Airline in or about Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.

(B) In lieu of the City's repair, reconstruction or replacement of the affected premises, as provided in Section 8.4 A., if Airline requests to perform said function with respect to damage under Section 8.1 and 8.2, the City may in its sole discretion and upon written notice, allow the Airline to perform such work. Airline shall not be performing such work as an agent or contractor of the City. The City shall reimburse Airline for the cost of such work performed by Airline that was otherwise the obligation of the City if prior to performing such work, the City and Airline agree that such work is the obligation of the City to perform.

Section 8.5 Damage from Airline Negligence

Notwithstanding the provisions of this Article 8, in the event that due to the negligence or willful act of Airline, its agents, servants or employees, or those under its control, Premises shall be damaged or destroyed by fire, casualty or otherwise, there shall be no abatement of rent during the restoration or replacement of said Premises and Airline shall have no option to delete the affected Premises from this Agreement under the provisions of this Article 8. To the extent that the costs 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 additional costs to the City. The City waives any claim against Airline for

damage caused by Airline to the extent the City is paid the proceeds of insurance provided in connection therewith.

ARTICLE 9
INSURANCE, INDEMNIFICATION AND SECURITY

Section 9.1 Indemnification

(A) Airline agrees to indemnify, save and hold harmless the City, and its agents and employees, from and against all claims, liabilities, judgments, damages, losses and reasonable costs and expenses (collectively, "Losses") arising from injury or death to persons or damage to property occasioned by Airline's breach of its obligations under this Agreement or Airline's use and occupancy of the Premises during the Term except to the extent any such Loss is due to the negligence or willful misconduct of the City, its agents or employees.

(B) The City agrees to indemnify, save and hold harmless Airline, and its agents and employees, from and against all losses arising from injury or death to persons or damage to property occasioned by the City's breach of its obligations under this Agreement or the City's operation of the Airport, except to the extent any such loss is due to the negligence or willful misconduct of Airline, its agents or employees.

(C) The parties shall give each other prompt and reasonable notice of any claim made or threatened for which indemnification may be sought hereunder, and each party shall have the right to investigate, compromise, and defend the same to the extent of its own interests. Any indemnified party hereunder shall have the right, but not the duty, at its sole cost and expense, to participate in the defense of any claim or litigation with attorneys of its choosing without relieving the indemnifying party of any obligations hereunder.

(D) The obligations of the parties pursuant to this Article 9 shall survive the expiration or earlier termination of this Agreement.

(E) Subject to the immunities or limits of damages established by Arizona law for municipalities, the City agrees to indemnify and hold Airline harmless for any and all liability for injuries to persons or damage to property caused by the negligence or willful misconduct of the City, or any agent, servant, employee, or other party under the control of the City; provided Airline shall give the City prompt and reasonable notice of any matter covered hereby and shall forward to the City every demand, notice, summons or other process received by Airline in regards to any claim or legal proceeding covered hereby, and failure to so notify the City shall, if it materially prejudices the City in its defense of such matter, relieve the City of its obligation to indemnify Airline thereof.

Section 9.1 Airline Insurance

(A) Airline shall maintain comprehensive airline liability insurance for the protection of Airline and the City as herein provided, its managers, officers, agents, and employees, insuring against damages because of bodily injury, death, property damage, and arising out of any operations of Airline in connection with this Agreement. Coverage shall provide limits not less than \$100 million per occurrence to a combined single limit in amounts not less than those set forth below.

(B) Workers' compensation and occupational disease coverage in the form of and in the minimum amounts required by the laws of the states in which Airline operates. Such coverage shall include employer's liability coverage with limits of no less than: \$1,000,000 each accident; \$500,000 Disease Policy Limit; and \$100,000 Disease Each Employee.

(C) Airline shall furnish the City, no later than thirty (30) days following the execution of this Agreement, a certificate(s) of insurance as evidence that the then required amounts and types of such insurance are in force. The City reserves the right to require a certified copy of such certificates upon request. Airline shall name the City as an additional insured on such insurance policy or policies to the extent of Airline's indemnification obligations hereunder, subject to policy terms, conditions, limitations and exclusions. Said policies shall be in a form, content and for a term generally used by Scheduled Air Carriers similar to Airline in their routine operations and shall provide for thirty (30) days' written notice to the City prior to the cancellation of, or any material change in, such policies and be written with an A.M. Best 'A' rated admitted carrier.

(D) To the extent that the Airline utilizes any of its own automobiles for its performance obligations under this Agreement, and the aforementioned Airline Liability insurance (9.1.A) does not cover automobiles, the Airline will be required to carry a minimum of \$1,000,000 combined single limit liability, to include non-owned autos.

(E) In regards to Advertising insurance that is not already contained in the Airline Liability insurance referenced above (9.1.A.) then a general liability coverage, combined in standard commercial general liability (CGL) policies with personal injury (PI) coverage, that insures the following offenses in connection with the insured's advertising of its goods or services: libel, slander, invasion of privacy, copyright infringement, and misappropriation of advertising ideas shall be required in a minimum amount of \$1,000,000 of coverage.

Section 9.2 Security for Payment

(A) If Airline shall commit an event of default under Section 11.1, the City shall have the right, by written notice to Airline, to impose or reimpose the security requirements of Section 9.4(A). In such event, Airline shall provide the City with the required security and shall thereafter maintain such security in effect until it complies with the provisions of the Agreement or, in no case, no less than a period of six (6) months. The City shall have the right to reimpose the requirements of Section 9.3(A) each time Airline commits such an event of default during the term of this Agreement. The City's rights under this Section 9.3(A) shall be in addition to all other rights and remedies provided to the City under this Agreement or by law.

(B) Notwithstanding the foregoing, the City agrees that Airline shall not be obligated to provide any security as of the date hereof and shall not be obligated to provide any such security in the future unless and until Airline is materially delinquent with respect to the payment of any amounts hereunder.

Section 9.3 Types of Security

- (A) When required by Section 9.3 to provide security for the rentals, fees and charges due hereunder, Airline shall comply with any one of the following three options within thirty (30) days following the Effective Date of this Agreement, or by the City's notice pursuant to Section 9.3(A):
- (1) Post with the City a surety bond, to be maintained for the six (6) month period referred to in Section 9.3(A). Such bond shall be issued by a surety company reasonably acceptable to the City and authorized to do business in the State of Arizona, and shall be in a form and content reasonably satisfactory to the City.
 - (2) Deliver to the City an irrevocable letter of credit drawn in favor of the City upon a bank which is reasonably satisfactory to the City, and which is authorized to do business in the State of Arizona. Said letter of credit shall be kept in force for the six (6) month period referred to in Section 9.3(A) and shall be in a form and content reasonably satisfactory to the City.
 - (3) Provide such other security as the City may elect to accept as an alternative to that specified in Sections 9.4(A) (1) and (2).
- (B) For purposes of this Section 9.4, any surety bond or letter of credit shall be conditioned on the satisfactory performance of all terms, conditions and covenants contained herein with respect to rentals, fees and charges during the term of this Agreement.

Section 9.4 Amount of Security

The amount of security required by Section 9.4 shall be an amount equal to three (3) months' average rentals on Airline Exclusive and Joint Use Space.

ARTICLE 10
RULES AND REGULATIONS, COMPLIANCE WITH LAWS
AND AFFIRMATIVE ACTION, NONDISCRIMINATION

Section 10.1 Rules and Regulations

(A) Airline shall observe and obey all Rules and Regulations governing conduct on and operations at the Airport and use of its facilities. The City agrees that all Rules and Regulations so promulgated shall not be inconsistent with the express terms of this Agreement or any legally authorized rule or regulation of the FAA, or any other Federal or State agency, which is binding in law on the Airline, as the same now are or may from time-to-time be amended or supplemented. Except as so expressly limited, the City's City to promulgate or amend Rules and Regulations shall not be affected by this Agreement. The City agrees that all Rules and Regulations shall be interpreted and enforced in a non-discriminatory manner.

(B) Airline shall not violate, nor permit its agents, contractors, or employees acting on Airline's behalf to violate any such Rules and Regulations that are now in effect or as may from time-to-time during the term hereof be promulgated by the City. Copies of the Rules and Regulations, as adopted, are on file in the Airport Director's office.

(C) The City, acting in its governmental capacity and not as the Airport operator, shall prescribe civil penalties and injunctive remedies for violations of such Rules and Regulations, and the same may be applied to Airline for violations by its agents, employees, and contractors acting on Airline's behalf. FRegulations.

(D) Airline employees have a designated employee parking area in a location designated by the Airport Director which is adjacent to the current Airport administration building. In the event of an Airline employee's disability, all requests for parking related accommodations shall be made in accordance with Americans With Disabilities Act (ADA) requirements.

Section 10.2 Compliance with Law

(A) Airline shall not use its Exclusive Use Space and Joint Use Space, or any part thereof, or permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable laws, and Rules and Regulations of Airline and of any city, county, or state government or agency or of the U.S. Government, and of any political division or subdivision of agency, city, or commission thereof that may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or to the Exclusive Use Space and Joint Use Space.

(B) At all times during the term of this Agreement, Airline shall, in connection with Airline's activities and operations at the Airport:

- (1) Comply with and conform to all existing and future statutes, resolutions and ordinances, and the rules and regulations promulgated thereunder, of all Federal, State, and other governmental bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.
- (2) Make, at Airline's own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such laws, ordinances, and rules and regulations referred to in Section 10.2 (B) (1), to which this Agreement is expressly subject.
- (3) Airline shall not bring any Hazardous Materials onto the Premises unless such Hazardous Materials are used in Airline's operations at the Airport and such Hazardous Materials are used, kept and stored in a manner that complies with all laws, rules and regulations applicable to such Hazardous Materials.
- (4) Airline shall handle, treat and manage all Hazardous Materials used by Airline on the Premises in compliance with all federal, state and local laws, rules and regulations relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials on or about the Premises.
- (5) Airline shall procure, maintain and comply with any necessary permits, licenses, and other governmental and regulatory approvals required for Airline's operations at the Airport,

including without limitation the discharge of materials or wastes into or through any storm or sanitary sewer serving the Premises.

- (6) If at any time Airline shall become aware that any Hazardous Material used, owned, possessed or controlled by Airline has been released or discharged into the environment in violation of applicable laws, rules and regulations, Airline shall promptly notify the City. In addition, Airline shall promptly notify the City of any enforcement, cleanup, removal, or other governmental or regulatory action instituted against Airline concerning its unlawful use or release of any Hazardous Material on the Premises.

(C) At all times during the term of this Agreement, City shall, in connection with City's activities and operations at the Airport:

- (1) Comply with and conform to all existing and future statutes, resolutions and ordinances, and the rules and regulations promulgated thereunder, of all Federal, State, and other governmental bodies of competent jurisdiction that apply to or affect, either directly or indirectly, City or City's operations and activities under this Agreement.
- (2) Make, at City's own expense, all nonstructural improvements, repairs, and alterations to the Airport except for Airline's Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such laws, ordinances, and rules and regulations referred to in Section 10.2 (C) (1), to which this Agreement is expressly subject.

Section 10.3 Nondiscrimination

Airline, as part of the consideration hereof and as a covenant running with the lease, hereby covenants and agrees that:

(A) No person shall be excluded from participating in or denied the benefits of, or otherwise subjected to illegal discrimination in, the use of the Airport on the basis of race, color, national origin, religion, age, sex, height, weight, marital status, physical or mental disability or other disability, and

(B) In the construction of any improvements and the furnishing of services thereon, no person shall be excluded from participating in or denied the benefits of, or otherwise be subjected to illegal discrimination in, the use of the Airport on the basis of race, color, weight, marital status, physical or mental disability or other disability, and

(C) Airline shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, as from time to time amended.

(D) Airline agrees that it shall insert the provisions of Section 10.3 (A), (B), and (C), inclusive, in any lease or other agreement by which it grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

(E) In the event of breach of any of the nondiscrimination covenants set forth in this Section 10.3, City shall have the right to terminate this Agreement and to reenter and repossess the Premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision shall not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including the expiration of appeal rights.

(F) Airline assures City that Airline will, to the extent authorized by law, undertake an affirmative action program as required by FAA Regulations, Title 14, Code of Federal Regulations, Part 152, Subpart E, entitled "Nondiscrimination in Airport Aid Program," or otherwise approved by the FAA, to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or physical handicap, be excluded from participation in any employment activities covered in such Subpart E. Airline further assures City that no person shall be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. Airline further assures City that it will require that its covered suborganizations provide assurances to Airline that, to the extent authorized by law, they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to the same effect.

(G) Airline covenants and agrees that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in the performance of this Agreement on the grounds of race, color, national origin, or sex, as provided in Part 23, of Title 49, of the Code of Federal Regulations entitled "Participation by Minority Business Enterprise in Department of Transportation Programs."

(H) In the event of a breach by Airline of any of the assurances or covenants in Section 10.3 (G), and (H), City shall have the right to terminate this Agreement, and to reenter and repossess any leased facilities hereunder, and to hold the same as if this Agreement had never been made or issued, but not without the express prior concurrence or direction of the U.S. Department of Transportation or the FAA following suitable review, if any, of such breach and affording Airline a reasonable opportunity to rectify the same, if appropriate.

(I) In addition to the federal anti-discrimination laws, rules and regulations listed above, Airline will also abide by State of Arizona anti-discrimination laws, rules, regulations and orders including, but not necessarily limited to, Arizona Governor Executive Orders 99-4, 200004 and 2009-09, as may be amended from time to time.

ARTICLE 11 **DEFAULT AND TERMINATION**

Section 11.1 Events of Default

(A) If Airline fails to:

(1) To pay any rents, fees or other charges payable by Airline hereunder and such failure continues for a period of fifteen (15) days after receipt of written notice of such failure from City;

(2) To comply with any other term or condition of this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice of such failure from City, provided that, if the default is of such a nature that it cannot be completely remediated within such thirty (30) day period, Airline shall be deemed to be in compliance if it begins correction of such default within the thirty (30) day period and proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable;

(3) In the case of an assignment by Airline for the benefit of creditors of Airline, or the filing by Airline of a voluntary petition of bankruptcy, or an adjudication that Airline is bankrupt, or an appointment of a receiver of the properties and assets of Airline, or the filing of an involuntary petition of bankruptcy, to secure a dismissal of such petition within ninety (90) days after filing.

(B) Then at the election of City:

(1) Without terminating this Agreement, City may reenter the space and restore to the condition required hereunder and relet all or any part of it to others, including costs of such restoration and a fifteen percent (15%) administrative fee to be paid to City. Airline shall promptly reimburse City for any deficiency in rentals or other payments received under such subletting, compared with Airline's obligations hereunder.

(2) At any time before or after a reentry and reletting as provided in Section 11.1 (B) (1) above, City may terminate Airline's rights under this Agreement, and City may reenter and take possession of all space, and cancel all rights and privileges granted to Airline hereunder, without any restriction on recovery by City for past due rentals and other obligations of Airline prior to such termination.

City shall have all additional rights and remedies as may be provided to landlords by law. Default on behalf of Airline does not relieve the Airline of any obligations under the terms of this Agreement.

Section 11.2 Events Permitting Termination of Agreement by Airline

Airline, at its option, may declare this Agreement terminated on the occurrence of any one or more of the following events:

(A) If City fails to perform any of its obligations under this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice of such failure from Airline, provided that, if the default is of such a nature that it cannot be completely remediated within such thirty (30) day period, City shall be deemed to be in compliance if it begins correction of such default within the thirty (30) day period and proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable;

B) The suspension for a period of more than ninety (90) days, or cancellation, of Airline's aircraft operating permit by the Federal Aviation Administration or any other governmental entity having jurisdiction over Airline's City to serve and/or operate into, from or through the Airport;

(C) The issuance of an injunction by a court of competent jurisdiction preventing or restraining the use of the Airport or any substantial part of it so as to restrict Airline's operations at, to or from the Airport, and such injunction remains in force for a period of at least ninety (90) days;

(D) The assumption by the United States Government or any authorized agency thereof of the use or operation of the common use facilities of the Airport or a substantial part thereof, in a manner that substantially restricts Airline from operations thereon, if such restriction continues for a period of not less than ninety (90) days.

(E) The reduction, cancellation, or termination of the Essential Air Service Program whether by Airline or by any other governmental entity having jurisdiction over Airline's City to serve and/or operate under the Essential Air Service Program.

Section 11.3 Events Permitting Termination of Agreement by City

(A) City, at its option, may declare this Agreement terminated on the occurrence of any one or more of the following events, and may exercise all rights of entry and reentry of Airline's Exclusive Use Space and Joint Use Space:

- (1) If the rentals and fees, or other money payments that Airline herein agrees to pay, or any part hereof, shall be unpaid on the date same becomes due as provided for in Section 11.1 herein.
- (2) If any act occurs that deprives Airline permanently of the rights, power, and privileges necessary for the proper conduct and operation of its Air Transportation business.
- (3) In the event Airline fails to provide scheduled Air Transportation for a period of thirty (30) consecutive days (except for events of Force Majeure), City may, at its sole discretion, cancel this Agreement on fifteen (15) days written notice. However, if Airline cures the breach within this fifteen (15) day period, the Agreement shall continue in full force and effect.
- (4) If Airline abandons and fails to use its Exclusive Use Space for a period of thirty (30) days at any one time, except by reason of an event of Force Majeure.

(B) City termination shall not be effective unless and until at least thirty (30) days have elapsed after written notice to Airline specifying the date upon which such termination shall take effect and the reason for such termination. Airline may cure the cause of such termination within said (30) day period, or such longer time as the parties may agree thereto. Termination by the City does not relieve Airline of any obligations under the terms of this Agreement.

Section 11.4 Possession by City

In any of the aforesaid events, City may take possession of the Airline's Exclusive Use Space and Joint Use Space upon a ten (10) day notice and remove Airline's effects, without being deemed guilty of

trespassing. On said default, all rights of Airline shall be forfeited, provided City shall have and reserve all of its available remedies at law as a result of said breach of this Agreement.

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

ARTICLE 12
ASSIGNMENT, SUBLETTING, MERGER and BANKRUPTCY

Section 12.1 Assignment and Subletting

Airline shall not assign this Agreement, or any of its rights hereunder, nor sublet the Airline's Premises or any part thereof, to any person without the prior written consent of City, which consent shall not be unreasonably withheld; provided, however, 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, or to which the business and properties of Airline, or substantially all of the same, may be sold or transferred by Airline.

Section 12.2 Nonwaiver of Responsibility

No assignment, transfer, conveyance, sublease, or granting a nonexclusive license by Airline shall relieve Airline of its responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent of the Airport Director to such relief.

Section 12.3 Ground Handling Agreements

Upon written notice to the Airport Director, Airline shall be allowed to ground handle any portion of the operations of another airline at the Airport.

Section 12.4 Bankruptcy

Notwithstanding Section 12.1, any party to this Agreement which seeks protection under the Bankruptcy Code, or is currently operating under the protection of the Bankruptcy Code, herein called "Debtor", shall be prohibited from conveying its interest under this Agreement to any other entity without written authorization of City. In the event that such a Debtor intends to assume the Agreement, or assume and assign the Agreement pursuant to 11 U.S.C. § 365, the Debtor shall be required to immediately cure any and all defaults and provide adequate assurance of future performance under the Agreement which shall include, but not be limited to:

- (A) Adequate assurance of the reliability of the proposed source for the rentals due under this Agreement on the assumption or assignment of this Agreement.
- (B) Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement.
- (C) The procurement of a bond from a financially reputable surety covering any costs or damages incurred by City in the event that City, within one (1) year following the assumption or assignment

of this Agreement, becomes entitled to, and exercises, any right to reassign the leased space covered under this Agreement.

Section 12.5 Consent

Consent by the Airport Director to any type of transfer provided for by this Article 12 shall not in any way be construed to relieve Airline from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

ARTICLE 13
GENERAL PROVISIONS

Section 13.1 Successors and Assigns Bound

All of the provisions of this Agreement shall extend to and bind the successors and assigns of the respective parties hereto.

Section 13.2 Governing Law

Agreement and all disputes arising here under shall be governed by the laws of the State of Arizona and other applicable local jurisdictions.

Section 13.3 Severability

If any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either party hereto in its respective rights and obligations contained in the valid covenants, conditions, or provisions in this Agreement.

Section 13.4 Quiet Enjoyment

City agrees that, upon payment of rent and other charges payable hereunder and the performance of its obligations set forth herein, Airline shall peaceably hold and enjoy the Premises and all of the rights and privileges of the City granted herein.

Section 13.5 Taxes

Airline shall pay, but such payment shall not be considered part of Airport Revenue, all taxes (including any possessory interest tax), assessments, and charges of a like nature, if any, (other than taxes based on or measured by City's net income) which at any time during the term of this Agreement may be levied against Airline or become a lien by virtue of any levy, assessment, or charge against Airline by the Federal government, the State of Arizona, any municipal corporation, any local government entity, any government successor in City to the foregoing, or any other tax or assessment levying bodies, in whole or in part, upon or in respect to any of the space leased under this Agreement or such facilities of the Airport as are made available for use by Airline hereunder, or upon or in respect to any personal property belonging to Airline situated on the space leased under this Agreement.

Payment of such taxes, assessments, and charges, when and if levied or assessed, shall be made by Airline directly to the taxing or assessing City charged with collection thereof. If, by law, any such taxes, assessments, and charges may at the option of the taxpayer be paid in installments, Airline may

pay the same in such installments over such period as the law allows, and Airline shall only be liable for such installments as shall become due during the Term. Airline may seek a reduction in the valuation of the Premises or its leasehold interest therein assessed for tax purposes, and may contest by appropriate proceedings, at Airline's sole cost and expense, the amount or validity in whole or in part of any taxes, assessments, and charges, and may defer payment thereof if allowed by law.

Section 13.6 Liens

Airline shall cause to be removed promptly any and all valid liens of any nature arising out of or because of any construction performed by Airline or any of its contractors or subcontractors upon Exclusive or Joint Use Space or arising out of or because of the performance of any work or labor by or for it or them at said premises, reserving the right to contest in court the validity of any such liens.

In the event any person or corporation shall attempt to assert a valid mechanic's lien against the leased premises for improvements made by Airline, Airline shall hold City harmless from such claim, including the reasonable cost of defense.

Section 13.7 Subordination to Agreements with the U.S. Government

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, or to the expenditure of Federal funds for the improvement or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, the Federal Aid to Airport Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, as such acts have been amended or replaced from time-to-time. The Federal Airport Improvement Program (AIP) Grant Assurance obligations are available at https://www.faa.gov/airports/aip/grant_assurances/. In the event that the FAA requires, as a condition precedent to the granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Airline agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be required to enable City to obtain such grant of funds.

Section 13.8 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 13.9 Entire Agreement

This Agreement, including the schedules and exhibits hereto, each of which is incorporated herein for all purposes, and any documents referred to herein, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any existing agreements between City and Airline regarding Airline's use and occupancy of the Airline's Exclusive Use Space and Joint Use Space.

Section 13.10 Nonwaiver of Rights

No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed, 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 13.11 Force Majeure

Neither party hereto shall be responsible or liable for, and that party shall be excused from, any non-performance or delay in the performance of any of its obligations hereunder if and to the extent that such non-performance or delay is caused by Force Majeure.

Section 13.12 Headings

The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit 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 13.13 Nonexclusive Rights

It is understood and agreed that nothing herein contained shall be construed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of this Agreement.

Section 13.14 Inspection of Books and Records

Each party hereto, at its expense and on reasonable notice, shall have the right from time-to-time to inspect the books, records, and other data of the other party relating to the provisions and requirements hereof, provided such inspection is made during regular business hours and upon reasonable prior notice. Each party shall retain all such records for a period of at least two (2) years. On at least thirty (30) days prior written notice, each party agrees to make any records required hereunder available to the other party at the other parties' offices at the Airport during regular business hours.

Section 13.15 City of Prescott Airport Director

All rights and obligations of City under this Agreement may be exercised by the Airport Director or the Airport Director's designee, unless specifically provided otherwise or required by law.

Section 13.16 Amendments

No amendment to this Agreement shall be valid unless it is in writing and is signed by each of the parties hereto. The terms of this Agreement may be waived only by a written instrument signed by the party that would have been able to require compliance therewith. Except where a specific period for action or inaction is provided herein, no delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver on the part of either party of any such right, power or privilege shall preclude any further exercise thereof or the exercise of any other such right, power or privilege.

Section 13.17 Employees of Airline

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

Section 13.18 Licenses, Fees, and Permits

Airline shall obtain and pay for all licenses, fees, permits, or other authorization or charges as required under Federal, State, or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

Section 13.19 National Emergency

This Agreement and all the provisions hereof shall be subject to whatever right the U.S. Government now has, or in the future may have or acquire, affecting the control, operation, regulation, and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

Section 13.20 Time is of the Essence

Time is of the essence in this Agreement.

Section 13.21 Notices

All notices, requests or other communications hereunder shall be in writing and shall be deemed given (i) when received, if delivered personally, (ii) on the next business day, if sent by overnight service prepaid with instructions for next business day delivery (receipt confirmed), or (iii) on the day of transmission, if telecopied (transmission confirmed) during the receiving party's normal business hours, or on the next business day if sent after the receiving party's normal business hours, in each case to the applicable party at the following addresses and numbers, or such other address and number as a party may have specified by notice given to the other parties hereto pursuant to this provision:

1. For City, to:

Robin Sobotta, Ph.D., Airport Director
Prescott Regional Airport
6546 Crystal Lane
Prescott, AZ 86301
Fax number: 928 771 5861
E-mail: robin.sobotta@prescott.az.gov

2. For Airline, to:

Ms. Kelly Lane
Corporate Real Estate
SkyWest Airlines
444 South River Road
St. George, UT 84790
Fax number: 435-634-3493
Email: Klane@skywest.com

Section 13.22 Affiliate Airlines

Airline's "Affiliate Airlines" (1) shall have the same rights to use the premises and the Airport as

Airline; (2) shall be charged at the same landing fee rates as Airline; (3) shall participate in any year-end or other reconciliation process whereby Airline shares in excess revenues or true-up of projected against actual costs; and (4) shall not be counted as a separate air transportation company from Airline for purposes of allocating the *per capita* portion of any cost allocation formula, but such Affiliate Airline's passengers shall be counted as enplaned passengers of Airline for purposes of any enplanement-based portion of such formula. Airline shall designate its Affiliate Airline(s) in writing and shall serve as financial guarantor solely for rentals, landing fees and other fees incurred by any such Affiliate Airline at the Airport while operating as Airline's designated Affiliate Airline hereunder. Airline may at any time give City sixty (60) days prior written notice that such an air transportation company otherwise meeting the definition of an "Affiliate Airline" hereunder shall no longer be considered an Affiliate Airline of Airline for purposes of this Agreement, and any guaranty by Airline of Affiliate Airline's rentals, landing fees and other fees shall terminate and be ineffective as to any amounts incurred by such air transportation company after the effective date of termination of "Affiliate Airline" status. An Affiliate Airline shall enter into a separate operating agreement with City and shall secure its own aviation insurance for liability purposes.

Section 13.23 Conflict of Interest

Pursuant to A.R.S. § 38-511, the City may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a Professional to any other party of the Agreement with respect to the subject matter of the Agreement. In the foregoing event, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City from any other party to the Agreement arising as a result of this Agreement.

Section 13.24 Boycott of Israel

The parties agree that they are not currently engaged in, and agree that for the duration of this Agreement, they will not engage in a boycott of Israel, as that term is defined and governed by A.R.S. §35-393.

Section 13.25 Bench Trial

The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Airline further agrees that this provision shall be contained in all sub-contracts entered into in the performance of this Agreement.

Section 13.26 Attorneys' Fees

The parties expressly hereto covenant and agree that in the event of any claims, disputes, or litigation arising from this Agreement, neither party shall be entitled to an award of attorneys' fees, either pursuant to this Agreement, A.R.S. §12-341.01(A) and (B), or pursuant to any state or federal statute,

court rule or common law. The Airline agrees that this provision shall be contained in all sub-contracts entered into in the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the date first above written.

CITY OF PRESCOTT

Name: Greg L. Mengarelli
Its: Mayor

ATTEST:

Maureen Scott, City Clerk

APPROVED AS TO FORM:

Jon M. Paladini, City Attorney

SKYWEST AIRLINES, INC.:

Name: G. Stephen Black
Its: V.P. Customer Service

Exhibit A Airport Layout Plan

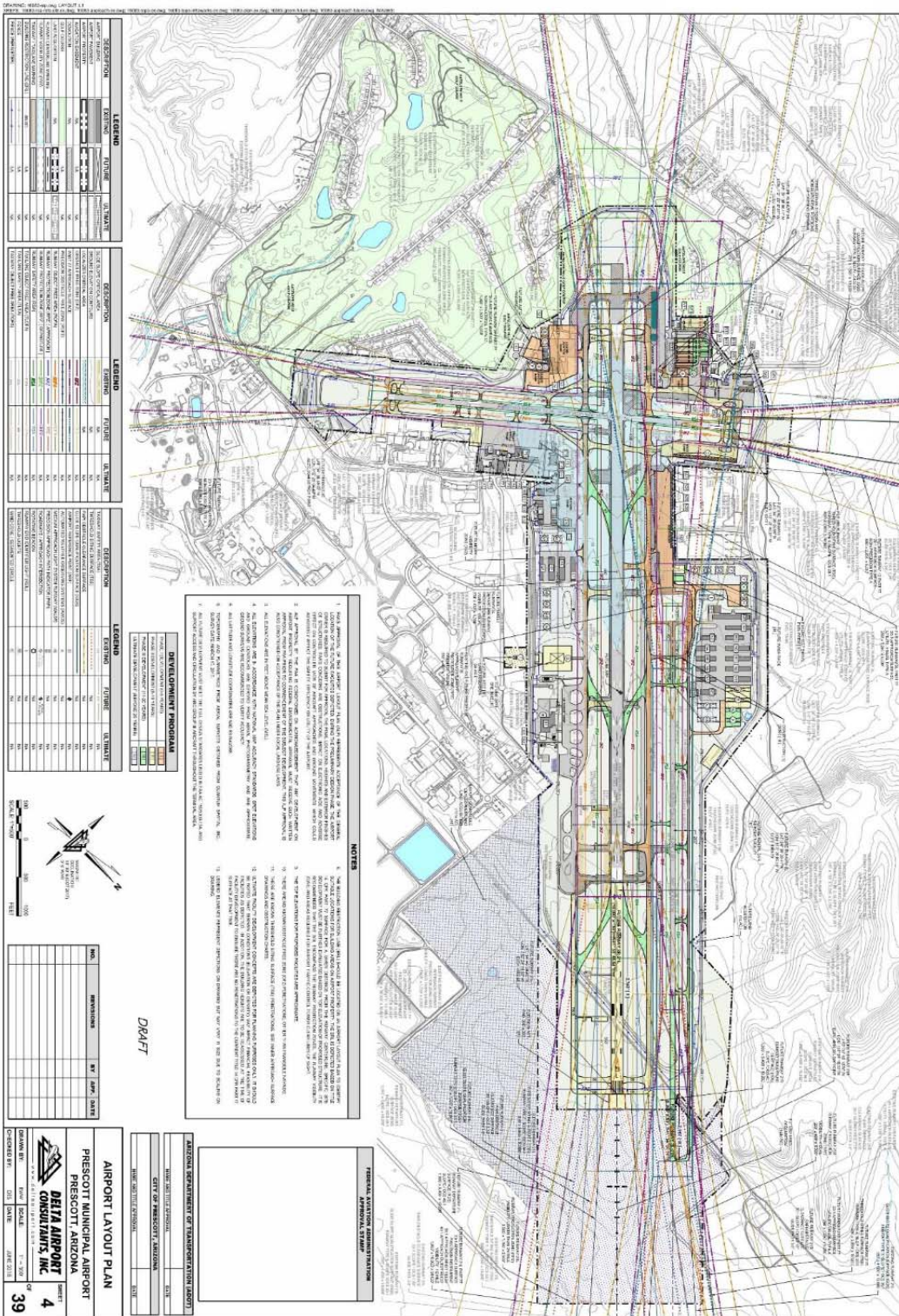


Exhibit B Terminal Layout Plan

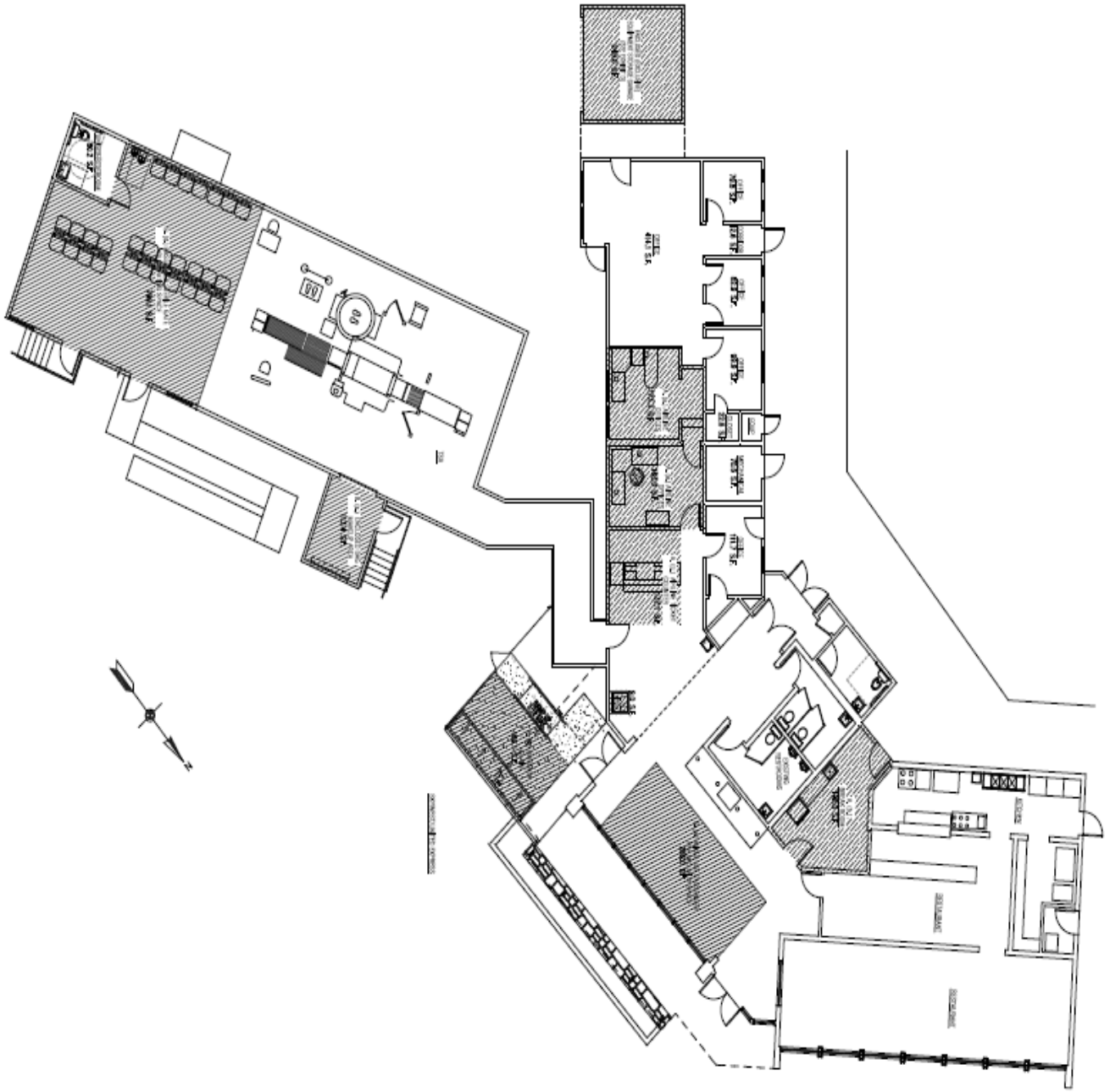


Exhibit C
Rates and Charges for Terminal Layout Plan

1. RENTALS: See Exhibit B for Terminal Layout Plan (psfpa – per square foot per annum)
 - A. Exclusive Use Space:
 - a. Airline Offices – 336.3 sq.ft. @ \$35 psfpa
 - b. Airline Breakroom – 198 sq.ft. @ \$35 psfpa
 - c. Airline Ticket Counter – 137.1 sq.ft. @ \$35 psfpa
 - d. Airline Passenger Self-Serve Kiosk – 9 sq.ft. @ \$35 psfpa
 - B. Joint Use Space – Airline Only (to be charged pursuant to the Airline Joint Use Formula):
 - a. Enclosed Bag Makeup Area (Cleared Checked Bag Space) – 113.4 sq.ft. @ \$19.00 psfpa
 - b. Baggage Claim – 166.1 sq. ft. @ \$19.00 psfpa
 - c. Passenger Sterile Holdroom Seating Space – 799.1 sq. ft. @ \$35 psfpa
 - C. Joint Use Space – Mixed Use (to be charged pursuant to the Mixed Joint Use Formula):
 - a. Passenger Pre-Security Space - 286 sq. ft. @ \$35 psfpa (Airline Only Portion \$17.50)
 - D. Other Equipment/Services Charges:
 - a. Public Address System Use – \$50.00/month (\$600 per annum)
 - b. Trash Pick-up - \$50.00/month (\$600 per annum)

Total Annual rentals due: \$64,846.00

2. LANDING AND OVERNIGHT PARKING FEES:
 - a. Landing Fee: \$1.50 per thousand lbs (for local/based aircraft), MGLW
 - b. Overnight Parking Fee: \$40.00 per night (A/C greater than 5000 lbs).
3. ARFF FEE: Lessee agrees to pay Lessor an Aircraft Rescue and Fire Fighting (ARFF) service fee of \$75.00 for the arrival and departure of the same aircraft where the intervening time is (2) consecutive hours or less. Where the intervening time between arrival and departure of the same aircraft exceeds two (2) consecutive hours, the ARFF fee shall be \$50.00. ARFF service begins sixty minutes prior to the aircraft's estimate time of arrival and ends fifteen minutes after actual time of wheels up departure.
4. FUEL FLOWAGE FEE: Collected through the FBO: \$ 0.12/gallon
5. FEE/RENTAL ADJUSTMENT: Upon not less than thirty (30) days prior written notice, City shall be entitled to increase the rentals and fees set forth above in an amount not to exceed two percent (2%) per annum for each 12 month period beginning August 29, 2019 after the Effective Date.

Exhibit D
Rates and Charges for Ground Service Equipment Storage Unit

RENTALS: See Exhibit B - Terminal Layout Plan (psfpa – per square foot per annum)

Exclusive Use Space:

- a) GSE Storage Unit – 240 sq.ft. @ \$6.45 psfpa

Total GSE storage unit rental due: \$1,548.00