

LEASE AGREEMENT

LEASE OF TICKET COUNTER AND OFFICE SPACE AT
FLAGSTAFF PULLIAM AIRPORT
TERMINAL BUILDING
FOR SCHEDULED COMMERCIAL AIR SERVICE
CITY OF FLAGSTAFF
ARIZONA

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EXHIBIT A FAA Airport Assurances.....

DRAFT

PULLIAM AIRPORT LEASE AGREEMENT

This is a Lease Agreement ("Lease Agreement") dated _____, 201__, between the City of Flagstaff (hereinafter referred to as "City"), a municipal corporation with offices located at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and _____ ("Airline") with its corporate office located at _____. City and Airline may be referred to in this Lease Agreement individually as "Party" or together as "Parties," as the case may be.

WITNESSETH

WHEREAS, City owns and operates certain real property located at 6200 S. Pulliam Dr., Flagstaff, Arizona in the County of Coconino, State of Arizona, known as Flagstaff Pulliam Airport (hereinafter called "Airport"), and

WHEREAS, Airline is engaged in the business of providing services for the commercial transportation of persons, property, cargo and mail by air ("Air Services"); and

WHEREAS, Airline desires to occupy and use certain premises and facilities on the Airport premises, together with obtaining certain rights and privileges thereon for the purpose of providing Air Services; and

WHEREAS, City, by virtue of its sole ownership of the Airport premises, has the authority to impose and collect all rentals, fees and charges related and incidental to Airline's use of the Airport and its appurtenances for providing Air Services;

NOW, THEREFORE, City does hereby agree to lease to Airline, and Airline does hereby agree to lease from City, certain premises and facilities, rights, services and privileges in connection with and on the Airport as follows:

Article 1. Definitions

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

1.01 Air Transportation Business shall mean that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.02 Air Transportation Company shall mean a legal entity certificated by the Secretary of Transportation and engaged in the business of scheduled or non-scheduled commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.03 Airfield shall mean those portions of the Airport, including the Terminal Aircraft Aprons and the Cargo Aircraft Aprons, provided for the landing, taking off, and taxiing of aircraft, including without limitation approach and turning zones, clear zones, avigation or other easements, runways, a fully integrated taxiway system, runway and taxiway lights, and other

appurtenances related to the aeronautical use of the Airport, including any airfield property purchased for noise or other environmental mitigation purposes.

1.04 Airline Premises shall mean those areas in the Terminal assigned to Airline as Exclusive Use Premises or Common Use Areas as defined herein.

1.05 Cargo Aircraft Aprons shall mean those areas of the Airport that are primarily designated for the parking of cargo aircraft and support vehicles and the loading and unloading of cargo aircraft

1.06 Chargeable Landings shall mean all Revenue Landings and Non-Revenue Landings except for those Non-Revenue Landings which are of an emergency nature.

1.07 City shall mean the City of Flagstaff and the person, division, department, bureau, or agency as may from time to time be expressly designated by the City to exercise functions equivalent or similar to those now exercised by the City with respect to rights and obligations of City under this Lease Agreement.

1.08 Common Use Areas shall mean those areas of the Airport, including without limitation common use gates, and baggage areas, not assigned on a preferential use basis (excluding Public Space) but rather used in common by Airline and one or more other Air Transportation Companies.

1.09 Director shall be the Airport Director and shall include such person or persons as may from time to time be authorized in writing by City or by the Director or applicable law to act for the Director with respect to any or all matters pertaining to this Lease Agreement.

1.10 Environmental Laws shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super lien or environmental clean-up statutes.

1.11 Exclusive Use Premises shall mean any office space, storage area, VIP lounge, employee break room or other area of the Terminal designated by City for exclusive use by Airline, which Exclusive Use Premises are described in Exhibit B attached hereto.

1.12 FAA shall mean the Federal Aviation Administration or its authorized successor(s).

1.13 Hazardous Materials shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which are or become listed or regulated under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Laws or any statutory or common law theory

based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil or environment or affect industrial hygiene, occupational health or safety, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.14 Landing Fee shall mean a fee expressed in dollars and cents per thousand pounds of the Maximum Gross Landed Weight of each type of Airline's aircraft and shall be multiplied by the total of all Maximum Gross Landed Weight for all Chargeable Landings of each type of aircraft landed at the Airport by Airline.

1.15 Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand-pound units for each aircraft operated at the Airport by Airline as certificated by the FAA or its successor.

1.16 Non-Revenue Landing shall mean any aircraft landed by Airline at the Airport for a flight for which Airline receives no revenue, including without limitation emergency flights that shall include any flight that after having taken off from the Airport and without making a landing at any other airport returns to land at the Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

1.17 Public Space shall mean all hallways, elevators, escalators, entrance-ways, public lobbies and areas, public toilet areas and other areas used for the operation, maintenance or security of the Terminal, even if used solely by City.

1.18 Revenue Landing shall mean a landing of any aircraft by Airline at the Airport for which Airline receives revenue.

1.19 Revenues shall mean income, revenues, receipts and moneys accrued by City in accordance with generally accepted accounting practices, including investment earnings, from or in connection with the ownership or operation of the Airport or any part thereof or the leasing or use thereof, but excluding:

1.20 Rules and Regulations shall mean Airport's Rules and Regulations governing the conduct of operations at the Airport as well as the City's Termination Resource Use, Assignment and Scheduling Procedures, as they currently exist or as they may be amended or supplemented during the Term of this Lease Agreement; provided, however, no such Rules and Regulations shall be in conflict with the terms of this Lease Agreement.

1.21 Scheduled Airline shall mean an Air Transportation Company performing Scheduled Operations at the Airport.

1.22 Scheduled Operation shall mean a Scheduled Airline's operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication so long as such schedule is made available to City at least forty-five (45) days prior to the commencement or rescheduling of the operation.

1.23 Term shall mean the period of time during which Airline's activities at the Airport shall be governed by this Lease Agreement. Said Term shall begin on the Effective Date (as set

forth in Article 2 hereof), and, except as otherwise set forth herein, terminate on the termination date set forth in Article 3 (subject to extension as provided in Article 2 hereof).

1.24 Terminal Aircraft Aprons shall mean those areas of the Airport that are primarily designated for the parking of passenger aircraft and support vehicles and the loading and unloading of passenger aircraft.

1.25 Terminal shall mean the passenger terminal buildings.

1.26 Ticket Counter shall mean those areas made available by the Airport for ticketing passengers and receiving baggage.

Article 2. Term

2.01 Effective Date. This Lease Agreement, along with the determinations of rentals, fees, and charges set forth herein, shall be effective on _____ (the "Effective Date").

2.02 Term. The term ("Term") of this Lease shall be for an initial ten (10) year period, with the Airline having the option to extend this Lease Agreement for two (5) year periods, exercised by the Airline, at its option, upon written notice to the City provided no less than ninety (90) days' prior to the end of then current Term. During the term, either party can terminate the Lease upon ninety (90) days' written notice.

Article 3. Grant of Rights to Use Airport

3.01 Airline Rights and Privileges. In addition to all rights granted elsewhere in this Lease Agreement, Airline shall have the right to use, in common with others so authorized by City, areas (other than areas leased preferentially or exclusively to others), facilities, equipment, and improvements at the Airport for the operation of Airline's Air Transportation Business (collectively "Leased Premises") and all activities reasonably necessary for such operations, including but not limited to:

3.01.1 The landing, taking off, flying over, taxiing, towing, and conditioning of Airline's aircraft and, in areas designated by City, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of Airline's aircraft and support equipment subject to the availability of space and subject to such reasonable charges and regulations as City may establish; provided, however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan ("ALP") or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual, without prior permission.

3.01.2 The loading and unloading of persons, property, cargo, parcels and mail by motor vehicles or other means of conveyance reasonably approved by City at Terminal Aircraft Aprons or such other locations as may be designated by the Director; provided Airline shall not use Terminal Aircraft Aprons immediately adjacent to the passenger Terminal to load or unload all-cargo aircraft unless otherwise authorized in writing by the Director.

3.01.3 The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, cargo, and express services, and reasonable and customary airline activities.

3.01.4 The use of the Common Use Areas at the Airport for its employees/service providers, agents and directors in common with other employees.

3.01.5 The training of personnel in the employ of or to be employed by Airline and the testing of aircraft and other equipment being utilized at the Airport in the operation of Airline's Air Transportation Business; provided, however, said training and testing shall be incidental to the use of the Airport in the operation by Airline of its Air Transportation Business and shall not hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.

3.01.6 The sale, disposition, or exchange of Airline's aircraft, engines, accessories, oil, grease, lubricants, fuel, or other similar equipment or supplies; provided, however, Airline shall not sell or permit to be sold aviation fuels or propellants except (i) to such Air Transportation Company which is a successor company to Airline, (ii) for use in aircraft of others which are being used solely in the operation of Airline's Air Transportation Business, including, but not limited to, Airline's code sharing partner(s), or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from Airline.

3.01.7 The purchase at the Airport or elsewhere of fuels, lubricants, and any other supplies and services from any person or company, subject to City's right to require that each provider of services and/or supplies to Airline secures a permit from City to conduct such activity at the Airport, pays required fees, and abides by all reasonable Rules and Regulations established by City. No discriminatory limitations or restrictions shall be imposed by City that interfere with such purchases; provided, however, nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. This Lease Agreement grants no right to store aviation fuels; the granting of any right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and City.

3.01.8 The servicing by Airline or its suppliers of aircraft and other equipment being utilized at the Airport by Airline on the Terminal Aircraft Aprons or such other locations as may be designated by the Director.

3.01.9 The provision, either alone or in conjunction with other Air Transportation Companies or through a nominee, of porter/skycap service for the convenience of the public, at no cost to City.

3.01.10 Airline shall have the right to purchase, contract or otherwise obtain property, facilities or services deemed by Airline to be required by, or incident to, its Airport operations under this Lease from any persons or organizations Airline may choose. This shall include the receipt of services from, and/or the operation of flights by any domestic Air Transportation Company that is (i) a parent or subsidiary of Airline or (ii) otherwise operates under essentially the same trade name as Airline at the Airport and uses essentially the same livery as Airline, for the purpose of operating aircraft on behalf of Airline. Said operations shall be included as operations of the Airline for the determination, assessment, invoicing, and allocation of applicable airport fees, rates, and charges to the Airline.

3.01.11 Airline shall have the right to ingress and egress from the Airport and Airline Premises for Airline's officers, employees, agents, and invitees, including passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such right shall be subject to 49 CFR Part 1542, applicable laws, and City's right in accordance with its applicable law to establish reasonable and nondiscriminatory Rules and Regulations governing (i) access by the general public, including Airline's passengers, and (ii) access to non-public areas at the Airport by Airline's employees, suppliers of materials, and furnishers of services; provided, however, any such Rules and Regulations of City shall not unreasonably interfere with the operation of Airline's Air Transportation Business. City may at any time temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway or access to the Airport, so long as a means of ingress and egress reasonably equivalent is concurrently made available to Airline. Notwithstanding the foregoing, as part of the obligations of Airline set forth in Article 11, Airline hereby releases and discharges City from any and all claims, demands, or causes of action which Airline may now or at any time hereafter have arising or alleged to arise out of such a closing or re-routing.

3.01.12 Subject to any applicable Airport Rules and Regulations, nothing in this paragraph shall prohibit Airline from (i) providing food and beverages, at Airline's sole cost and expense, in its non-public Exclusive Use Premises solely for Airline's employees, (ii) installing or maintaining vending machines in Airline's non-public Exclusive Use Premises solely for Airline's employees, the type, kind, and locations of which shall be subject to the approval of the Director, and (iii) providing under a separate agreement with City for its own flight kitchen at the Airport for catering services to its passengers and crews for consumption aboard aircraft or (iv) selling or providing food and beverages in a "VIP room" or similar private club at the Airport so long as Airline (A) purchases all alcoholic beverages or other beverages and any related food service items sold at or within any such area from an Airport concessionaire or (B) pays a concession fee related for the sale of all alcoholic beverages or other beverages and any related food service items sold at or within any such area (such concession fee shall be equal to the concession fee(s) for related items in the other areas of the Terminal). Nothing contained herein shall preclude Airline from providing food and beverages to its passengers in case of flight delays or cancellations without complying with the provisions of this Section 3.01.12.

3.01.13 Airline may exercise on behalf of any other Air Transportation Company having an operating agreement or permit with City any of the rights granted to Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation Business at the Airport, subject to the provisions hereof.

3.01.14 Airline may only enter into agreements providing for pay telephones or internet access for the public in its airline clubs and VIP rooms, and Airline shall not enter into any agreements providing for pay telephones or internet access for the public anywhere else within the Airport.

3.01.15 Except as herein otherwise specified, Airline and its suppliers or contractors of property, facilities or services shall have the right to use the Airport and appurtenances free of any charges or fees by City of any nature, direct or indirect, for Airline's Airport operations as described herein under this Lease, including the necessary purchasing, selling, using, storing, withdrawing, handling, consuming, loading, unloading or delivering any such property or transporting the same to, from or at the Airport.

3.02 Employee Parking Facilities. Airline shall have the right to the reasonable use of adequate vehicular parking facilities for its employees/service providers at the Airport in common with other Airport employees. Such facilities shall be located in an area designated by the Airport Director. City reserves the right to impose a reasonable charge for such employee parking facilities, if deemed necessary, based on the cost of providing, operating, and maintaining the parking facilities.

3.03 Exclusions and Reservations. Nothing in this Article 3 shall be construed as authorizing Airline to conduct any business separate and apart from the conduct of its Air Transportation Business.

3.04 Limitations on Use by Airline. In connection with the exercise of its rights under this Lease, Airline shall not:

3.04.1 Airline shall not knowingly interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport.

3.04.2 Airline shall not dispose of nor permit any other person to dispose of any waste material into the sanitary or storm sewers at the Airport or elsewhere (whether liquid or solid) unless such waste materials or products are first properly treated in compliance with law. Nothing herein shall prohibit Airline from disposing of human waste taken from its aircraft in properly designated sanitary sewer facilities.

3.04.3 Keep or store, during any twenty-four (24) hour period, flammable liquids within the enclosed portion of the Leased Premises in excess of Airline's working requirements during said twenty-four (24) hour period, except in storage facilities especially 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. Any such liquids having a flash point of less than one hundred degrees Fahrenheit (100F) shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

3.04.4 Do or permit its agents, employees, directors or officers to do any act or thing upon the Airport premises that will jeopardize the Airport's operating certificate.

3.04.5 Do or permit its agents, employees, directors or officers to do any act or thing in conflict with the Airport's TSA approved security plan.

3.04.6 Airline shall not engage in any activity prohibited by City's approved FAR Part 150 Noise Compatibility Study and Preferential Runway Use Program as amended or supplemented from time to time in accordance with applicable law.

3.04.7 Airline shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Lease Agreement. If Airline shall do or permit to be done any act not permitted under this Lease Agreement, or fail to do any act

required under this Lease Agreement, regardless of whether such act shall constitute a breach of this Lease Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from City to do so.

3.04.8 Airline shall not maintain or operate in the Terminal or elsewhere at the Airport a cafeteria, restaurant, bar, or cocktail lounge for the purpose of selling food and beverages to the public or to Airline's employees and passengers, except as may be permitted under Section 3.01.12 above.

3.04.9 City may, at its sole option, install or cause to be installed advertising and revenue generating devices, including vending machines, in Common Use Areas. City may also, at its sole option, install pay telephones or internet access in any part of the Terminal excluding airline clubs and VIP rooms. City shall be entitled to reasonable access to all lease hold areas to install or service such telephones, internet access and devices. Income generated by such telephones, internet access and devices shall be accounted for in the same manner as other non-airline Revenues of the Airport.

3.04.10 Except as otherwise provided in Section 3.01.12 above, Airline shall not install or operate amusement machines or vending machines.

3.04.11 Airline shall not disturb any asbestos at the Airport without first obtaining all permits and approvals as required by applicable Environmental Laws or by the City.

3.04.12 The rights and privileges granted Airline pursuant to this Article 3 shall be subject to any and all reasonable and nondiscriminatory Rules and Regulations established by City, as such Rules and Regulations may be amended from time to time, and to the provisions of this Lease Agreement. Airline covenants and agrees that it will not violate or permit its agents, contractors or employees to violate any such Rules and Regulations. City may prescribe civil penalties and injunctive remedies for violations of any Rules and Regulations, and the same may be applied to Airline for violations of Airline's agents, contractors or employees.

3.04.13 Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Lease Agreement are hereby reserved for and to City.

Article 4. Assignment and Subleasing

4.01 Assignment. This Lease Agreement may be assigned by Airline with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. No assignment shall relieve Airline (Assignor) from any of its obligations and liabilities under the Lease Agreement with respect to City. The City Manager shall have authority to consent to an assignment on behalf of City. Notwithstanding anything contained herein to the contrary, this Lease Agreement may be assigned by Airline, without the City's consent, to an entity with whom Airline may merge or consolidate or to an entity that may succeed to all or substantially all of the Airline's assets.

4.02 Successors and Assigns. All covenants and conditions of this Lease Agreement shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the

respective Parties to this Lease Agreement, provided that any such representation, succession or assignment is authorized and permitted under this Lease Agreement and by law. Any and all agreements that Airline shall make with any permitted assignee, and/or contracted airline of the Leased Premises, or any part thereof, shall be deemed to include all provisions contained in this Lease Agreement.

Article 5. Operation and Maintenance of the Airport

5.01 Maintenance of Airport by City. City shall operate, maintain and keep in good repair the Airport, Administration Building, and all appurtenances, facilities and services now or hereafter connected with the foregoing, and shall maintain and operate the Airport Premises in all respects in a manner at least equal to the highest standards or ratings for airports of similar size and character issued by the Federal Aviation Administration ("FAA"), and in accordance with all rules and regulations of the FAA. Without limiting the generality of the foregoing, the maintenance provided for herein shall include the keeping of runways, aprons, strips, and ramps free of snow and other obstructions insofar as reasonably possible.

5.02 Maintenance of Airport by Airline.

5.02.1 Airline shall, at its sole expense, maintain the Exclusive Use Premises in good repair, normal wear and tear, provided, however, that Airline shall not be obligated to repair any damages because of structural defects in the Terminal, nor shall Airline be required to make any replacements or substantial repairs, which were not occasioned by damage caused by Airline).

5.02.2 Airline shall, at its sole expense, maintain its Terminal Aircraft Aprons in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers; and remove all oil and grease spillage that is attributable to Airline's aircraft or equipment from its aircraft parking positions.

5.02.3 Airline shall, at its sole expense, perform ordinary preventative maintenance and ordinary upkeep and nonstructural repair of all facilities, personal property, and equipment, including, but not limited to, fixtures, doors and windows, floor coverings, ticket counters (except for the facade), and baggage and passenger examination and inspection facilities within Airline's Exclusive Use Premises of the Terminal, including all electrical work, plumbing, appliances, and fixtures. City, at its own expense, shall maintain and keep in good repair the exterior portions of the walls and roof of the Airport and all central mechanical distribution systems.

5.02.4 Airline shall, at its sole expense, promptly repair any damage in any other location at the Airport caused by the fault or negligence of Airline, its servants, agents, employees, licenses, passengers, and invitees.

5.02.5 Airline expressly agrees that City shall not be liable to Airline, for bodily injury or for any loss or damage to real or personal property caused by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, acts of civil authority, or any other cause beyond the control of City.

5.02.6 If Airline fails to perform any of its obligations under this Section of the Lease, City may elect to do so after prior reasonable written notice and recover its entire cost plus a fifteen percent (15%) administrative charge from Airline.

5.03 Alterations or Improvements by Airline.

5.03.1 Airline shall have the right to install, maintain, and operate, at no cost to City, such radio communication, company telephone system, computer, meteorological and aerial navigation equipment and facilities on Airline's Exclusive Use Premises as may be necessary or convenient for the operation of its Air Transportation Business; provided, however, that except for equipment and facilities already in place, such installations shall be subject to the prior written approval of the Director. Prior to any written approval, Airline shall provide the Director with all necessary supporting documentation related to such installations.

5.03.2 City shall grant to Airline such rights of way as may reasonably be required by Airline for communications, computer equipment, teletype, telephone, interphone, conveyor systems and power, and other transmission lines in areas preferentially-leased by Airline, subject to the availability of space and/or ground areas as determined by the Director. City reserves the right to require the execution of a separate agreement between City and Airline for the lease and use of such space and/or ground area outside Terminal.

5.03.3 Airline shall have the right to install personal property, including furniture, furnishings, supplies, machinery, and equipment, in Airline's Exclusive Use Premises as Airline may deem necessary, useful or prudent for the operation of its Air Transportation Business (the installation of such personal property shall be permitted only as provided in the Airport Rules and Regulations). Title to any such personal property (including removable trade fixtures but excluding other fixtures and improvements to the Terminal) shall remain with Airline, subject to the provisions of this Lease Agreement.

5.03.4 Airline shall make no improvements to the Exclusive Use Premises until it has first, at its sole cost and expense, submitted all design and construction plans, specifications and related documents for the improvements to City's Planning and Development Services Division, and that Division has issued a building permit for the improvements, where applicable. Airline shall further diligently pursue and obtain all other permits, licenses and authorizations required.

5.03.5 Before commencing any improvement or equipment installation at the Exclusive Use Premises, Airline shall require that its construction contractors procure and maintain insurance for any construction and installation protecting both Airline and City, as well as the construction contractors, with policy amounts and coverage as City in each instance determines and provide certificates of insurance with respect to all such policies to City prior to commencement of construction. Such policies shall name City as an additional insured.

5.03.6 Airline shall ensure that all improvements, additions or alterations constructed by Airline within the Leased Premises are constructed in a good and workmanlike manner and conform to all applicable statutes, ordinances, building codes, rules and regulations of any governmental authority having jurisdiction, and to the general architectural scheme of the Terminal Building. Airline shall require in all contracts for construction that all contractors also

comply with all applicable statutes, ordinances, codes, rules and regulations. Airline's construction work shall be subject to inspection by City's Planning and Development Services Division and its authorized personnel upon prior reasonable notice and during reasonable business hours. Airline shall keep the Leased Premises free and clear of liens for labor and material and shall hold the City harmless from any liability arising therefrom.

5.03.7 Construction Period. Airline shall commence construction of improvements at the Leased Premises not later than thirty (30) days from the date of its receipt of a building permit and all other required permits, licenses and authorizations and shall complete construction of all improvements expeditiously. The issuance of a Certificate of Occupancy for the Leased Premises following a satisfactory final inspection by City's Planning and Development Services Division shall signify completion of construction and City's acceptance of Airline's improvements.

5.03.8 Cost of Improvements. Airline shall bear all costs of the construction of any and all improvements, alterations and additions to the Leased Premises by or for Airline.

5.03.9 Additional Alterations, Additions or Replacements. Airline shall obtain a building permit, where applicable, prior to making no alterations, additions, replacements or improvements to the Leased Premises for which a building permit (where applicable) is required. Airline shall not install any equipment which requires any electrical connection (other than by ordinary wall plug or floor receptacle) nor make any changes in those electrical connections installed on the Leased Premises, without the prior written consent of the Airport Director. Any electrical service needed by Airline other than that provided at the execution of this Lease Agreement shall be installed and provided at Airline's sole cost and expense.

5.04 Signs. Except as may be otherwise provided in this Lease Agreement, Airline shall not erect, install, operate or cause or permit to be erected, installed or operated at the Leased Premises, the Terminal Building or any other Airport property, any signs or similar advertising devices without having first obtained the written consent of the Airport Director, which consent shall not be unreasonably withheld, conditioned or delayed. All such signs or similar advertising devices shall not conflict with the rights of other airlines or concessionaires at the Airport and shall conform in all respects to the applicable requirements of City's Sign Code.

5.05 Airline Operating Plans. Airline shall be responsible for submitting a plan of reasonable operation for all of the services provided as part of its Air Transportation Business under this Lease Agreement. The operation plan shall be subject to approval by the Airport Director. The operation plan shall include placement of equipment and general operating procedures including the procedures and methodology for deicing planes. Procedures shall include the brand name and chemical description of the deicing agent, and methods for application. Aircraft maintenance runups shall only be conducted in areas designated by the Airport Director.

5.06 Damage or Destruction. In the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Airline Premises. To the extent that the costs of repairs shall

exceed the amount of any insurance proceeds payable to City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City.

5.07 Removal of Disabled Aircraft. Airline shall after release, if applicable, from any government authorities or agencies with jurisdiction over such disabled aircraft promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and gate positions) and place any such disabled aircraft in such storage areas as may be designated by the Airport Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be determined by City. If Airline fails to remove any of its disabled aircraft promptly, after release, if applicable, from any government authorities or agencies with jurisdiction over such disabled aircraft, the Airport Director may, after informing Airline of his intent to do so, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall not be inconsistent with Federal laws and regulations. All costs expended by City in the removal of such aircraft shall be paid by Airline.

Article 6. Rents, Fees and Utilities

6.01 Rental Amount. The minimum annual rental amount for the Leased Premises shall be \$36,000.00 per year for 1,027 square feet of Ticket Counter space, office space and storage and an additional rental fee for 0 square feet of additional office space at \$0 per square foot per year, inclusive of applicable taxes. The annual rental amount shall be payable monthly, in advance, beginning on ____ 2019. If payments are more than thirty (30) days late, a penalty charge of ten percent (10%) of the amount of the rent, plus interest at the rate of one percent (1%) per month or fraction of a month, is due and payable until paid.

6.01.1 Storage. The City will allow a semi-permanent storage unit adjacent to the Terminal Building at an agreed upon location determined by the Airline and Airport Director and the Airline will pay \$.34 per square foot for such storage unit. Such storage shall not interfere with the movement of aircraft.

6.02 Landing Fee. At the beginning of each month, Airline shall provide the Airport Director or designee with a landing report containing the following data from the previous month: the number of scheduled flights, the number of actual flights, the number of deplanements, the number of enplanements, the aircraft type(s) used during the previous month, and a calculation of landing weight based on total aircraft landings for the report month. All calculations for aircraft weight must be based on FAA Certificated weight rounded to the nearest 1,000 pounds. The City will generate an invoice based on the total landing weight for the month. Except to the extent the City has approved an incentive agreement related to new routes, Airline shall pay to City, on or before the fifteenth (15th) day of each month, a landing fee at the rate of \$1.09 per thousand pounds of declared maximum certified gross landing weight of the aircraft landed at the Airport by Airline during the previous month. If the aircraft has returned to field landing for mechanical, emergency, or weather-related instances, this fee will be waived.

6.02.1 For calculation of the monthly landing fee, the maximum certified gross certificated weight in one thousand-pound units for which each aircraft operated at the Airport by Airline as certificated by the FAA or its successor shall be used. Landing fees shall be calculated on the

basis of the total number of actual landings made during the previous month. Airline shall provide the Airport Director with a verified copy of Airline's total previous month's landings which shall be used as the basis for determining the actual monthly landing fee amount on or before the 15th day of each month. Airline shall submit this information in addition to other information, i.e., enplanements and deplanements, in a manner prescribed by the Airport Director.

6.03 Fees. Airline shall be responsible for payment of all current and future fees in effect during the term of this Lease Agreement. The City will provide written notification to Airline one hundred and twenty (120) prior to implementing a new fee.

6.04 Current Status. All of Airline's accounts with City shall be kept current during the term of this Lease Agreement.

6.05 Rental Rate Adjustment. The annual rental rate owed by Airline to City shall be adjusted annually at the anniversary date of the commencement of this Lease Agreement. The rental rate adjustment shall be an increase of 2% of the preceding year's annual rental payment.

6.06 Utilities. City hereby agrees to provide water, gas, sewer, electric to the Leased Premises as well as to all public and non-exclusive areas of the Terminal Building at the Airport at no additional charge to Airline.

Article 7. Payment Provisions

7.01 Invoices. City shall send an invoice, on a monthly basis, to Airline for the rent payable by Airline pursuant to Section 6.01 hereof. The rent payable under Section 6.01 hereof is payable in advance, monthly, regardless of when, or if, the invoice is received by Airline. The City may include any applicable fees in the monthly invoice for rent or the City may separately invoice any applicable fees. Either way, the invoice will set forth the due date for payment of those fees.

7.02 Taxes. Airline shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Airline's operations pursuant to this Lease Agreement. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as applicable.

7.03 Federal Excise Taxes. The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.

7.04 Fuel Charges. Airline, at its own expense, is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.

Article 8. Compliance with Laws, Rules and Regulations

8.01 General. Airline, its employees, representatives and agents, shall comply at all times with all present or future applicable laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of the Airport, the Terminal

or the Airport Premises, as may from time to time be promulgated by federal, state or local governments and their authorized agencies.

8.02 Airport Rules and Regulations. Airline covenants and agrees to observe and obey all rules and regulations adopted by the City with respect to the use of, conduct and operation of the Airport, the Terminal Building or any additions or improvements therein.

8.03 Energy Conservation. Airline shall comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201 *et seq*).

8.04 Compliance with Airport Improvement Program. Airline covenants and agrees that this Lease Agreement may be amended by the City, after consultation with Airline, in a manner necessary to comply with any requirement of the FAA or other instrumentality of the federal government or State of Arizona in order for the City to qualify or maintain its qualification under the Airport Improvement Program, as authorized and administered under the Airport and Airway Improvement Act of 1982, 49 U.S.C. § 47101 *et seq.*, as amended.

8.05 Compliance with FAA Assurances. Airline covenants and agrees to comply in all respects with the FAA Airport Assurances attached to and incorporated into this Lease Agreement as Exhibit A, and any subsequent amendments thereto (in which the term "sponsor" shall be deemed to mean and include the City), to the extent that its terms shall be applicable to Airline and its operations under this Lease Agreement.

8.06 Airline to Observe Rules and Regulations. Airline shall observe and obey all reasonable nondiscriminatory and lawful Rules and Regulations which may from time to time be promulgated by City for operations at the Terminal Building and at the Airport, provided, the same are consistent with safety, do not conflict with the provisions of this Lease Agreement or regulations and procedures prescribed by the FAA for operations of Airline's aircraft at the Airport.

8.07 Nondiscrimination. Airline shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Airline located within City of Flagstaff limits shall comply with Flagstaff City Code, Chapter 14-02, Civil Rights, which also prohibits discrimination based on sexual orientation or gender identity or expression.

8.08 Federal and State Immigration Laws. Pursuant to A.R.S. § 41-4401, Airline hereby warrants to the City that the Airline shall and shall require that each of its subcontractors comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Lease Agreement and shall subject the Airline to penalties up to and including termination of this Lease Agreement at the sole discretion of the City. The City retains the legal right to inspect employment verification documents of any Airline or subcontractor employee who works on this Lease Agreement to ensure compliance with the Contractor

Immigration Warranty. Airline agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Airline and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Airline agrees to assist the City in regard to any random verification performed. Neither Airline nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Airline or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

8.09 Security. The Airport operates under a TSA approved Security Program ("Security Program"), and in accordance with the Aviation and Transportation Security Act, 49 U.S.C. Section 40101 et seq., 49 CFR Part 1542. The Security Program requires all air service carriers at the Airport to comply with the Security Program. City shall provide a sterile screening and holding room for the non-exclusive use of Airline at the Terminal Building. All areas airside of the Terminal shall be controlled. Entry by unauthorized persons, ground equipment, and aircraft is prohibited. All enplaning passengers shall be screened prior to boarding the aircraft. Airline's personnel shall closely monitor enplaning passengers to ensure each passenger remains sterile during the boarding process. Airline shall be responsible for unclaimed baggage. Each piece of unclaimed baggage unloaded from Airline's aircraft, which remains unclaimed, forty-five (45) minutes after the arrival of the flight on which the baggage was transported, shall be retrieved by Airline and stored in Airline's secure baggage area.

Article 9. Environmental

9.01 Hazardous Materials.

9.01.1 Standards of Operation – Disposal, Use and Storage of Hazardous Materials. The voluntary or involuntary release or discharge of Hazardous Materials on the Airport is strictly prohibited (except to the extent, if any, that disposal of Hazardous Materials through the City's sewerage system complies with all applicable Environmental Laws). Storage and use of Hazardous Materials on the Airport is prohibited, except:

(a) Airline may store and use Hazardous Materials on the Airline Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Lease Agreement. Airline shall provide Director with a copy of any application for a permit, if required, for use or storage of Hazardous Materials on the Airline Premises from any regulatory agency responsible for enforcement of Environmental Laws and shall also provide a copy of any permit received from such agency; and

(b) Airline may use Hazardous Materials on the Airport other than the Airline Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Lease Agreement and for which no permit is required to be obtained from any regulatory agency under any Environmental Law.

9.01.2 Liability. Airline shall be solely and fully responsible and liable for:

(a) Storage, use or disposal of Hazardous Materials on the Airline Premises or the Airport by Airline, Airline's officers, agents, employees, contractors, permittees or invitees; or

(b) Any Hazardous Materials release or discharge which is caused by or results from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees on the Airline Premises or the Airport.

9.01.3 Prevention of Release or Discharge. Airline shall take all reasonable precautions to prevent its activities from causing any Hazardous Materials release or discharge to occur on the Airline Premises or the Airport and shall take all reasonable precautions to prevent any unlawful release or discharge into soil, groundwater, or City's sewage or storm drainage system. All spills must be reported to the Airport Operations/ARFF staff immediately (928-213-2936).

9.01.4 Obligation to Investigate and Remediate. Airline, at Airline's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws, any release or discharge or threat of release or discharge of Hazardous Materials on the Airline Premises or the Airport, including but not limited to any release or discharge or threat of release or discharge into soil or groundwater which was caused or results in whole or in part from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees but excluding the disposal of Hazardous Materials through the City's sewerage system so long as such disposal complies with all applicable Environmental Laws. In addition to all other rights and remedies of City hereunder, if Airline does not promptly commence investigation of any such release or discharge or threat of release or discharge or diligently pursue appropriate remedial activities as required by applicable Environmental Laws, City, in its discretion, may pay to have same investigated and remediated as required by applicable Environmental Laws, and Airline shall reimburse City for its share of the costs within thirty (30) days of City's demand for payment. The failure to commence investigation and provide City with a schedule for diligent completion of any required remediation within thirty (30) business days after (a) Airline's discovery of such release or discharge or threat of release or discharge or (b) notice of such release or discharge or threat of release or discharge to Airline shall constitute prima facie evidence of failure to promptly commence investigation and remediation.

9.01.5 Indemnification. In addition to the obligations of Airline as set forth in Section 11.01 hereof, Airline shall defend (with counsel acceptable to City in City's reasonable discretion), indemnify and hold City harmless from and against all loss, damage, liability (including all consequential damages) and expense (including, without limitation, the reasonable and necessary costs of any cleanup and remediation of Hazardous Materials as required by applicable Environmental Laws) which City may sustain as a result of storage, use or disposal of Hazardous Materials on the Airline Premises or the Airport by Airline, Airline's officers, agents, employees, contractors, permittees or invitees; or (b) Any Hazardous Materials release or discharge on the Airline Premises or the Airport other than the Exclusive Use Premises, including but not limited to any release or discharge into soil or groundwater, or City's sewage or storm drainage system,

which is caused by or results from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees.

9.01.6 Release of Claims Against City. Airline releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Airline may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Materials on the Airline Premises or the Airport, but only to the extent the presence of such Hazardous Materials was not caused by or did not result from the negligence, willful misconduct, acts or omissions of City, City's officers, agents, employees contractors, permittees or invitees. This release shall not apply to any claims for contribution that Airline may have against City in the event that Airline incurs any cost in undertaking any cleanup of Hazardous Materials from the Airline Premises or the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release or discharge of Hazardous Materials for which Airline is not responsible and liable under this Lease Agreement.

9.01.7 Records and Inspections.

(a) If Airline makes any written disclosure, or provides any report, to any governmental agency concerning Hazardous Materials at the Airport, Airline shall concurrently also provide a copy of such disclosure or report to City.

(b) Airline shall promptly deliver to City all notices that Airline receives from any governmental agency or third party concerning Hazardous Materials at the Airport.

(c) Airline shall maintain, during the term of this Lease Agreement and for a period of not less than five (5) years after the expiration or termination of this Lease Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Materials by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

9.01.8 Airline Obligations Upon Termination. Prior to vacating the Airline Premises, and in addition to all other requirements under this Lease Agreement and without limiting Airline's indemnification obligations under Section 11.01, Airline shall remove any Hazardous Materials placed on the Airline Premises during the Term by Airline or as a result of Airline's use or occupancy of the Airline Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City to demonstrate such removal has been completed according to the terms of this Lease Agreement. This removal and demonstration shall be a condition precedent to City's return of the Contract Security to Airline upon termination or expiration of this Lease Agreement.

9.01.9 Survival of Obligations. Airline's obligations under this Section 10.01 shall survive the expiration or earlier revocation or suspension of this Lease Agreement.

9.02 Stormwater.

9.02.1 Notwithstanding any other provisions or terms of this Lease Agreement, Airline acknowledges that certain properties within the Airport, or on City owned land, are subject to federal and state stormwater rules and regulations. Airline agrees to observe and abide by such stormwater rules and regulations as may be applicable to City's property and Airline's uses thereof.

9.02.2 Airline acknowledges that any stormwater discharge permit issued to City may name Airline as a co-permittee. City and Airline both acknowledge that cooperation is necessary to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Airline acknowledges further that it may be necessary to undertake such actions to minimize the exposure of stormwater to "significant materials" generated, stored, handled or otherwise used by Airline, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable stormwater rules and regulations.

9.02.3 City will provide Airline with written notice of any stormwater discharge permit requirements applicable to Airline and with which Airline may be obligated to comply from time-to-time, including but not limited to: certification of nonstormwater discharges; collection of stormwater samples; preparation of stormwater pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline agrees that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the stormwater permit requirements it is being directed to undertake. If Airline does not provide such timely notice, Airline will be deemed to assent to undertake such stormwater permit requirements. In that event, Airline agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Airline, those stormwater permit requirements for which it has received written notice from City, and Airline agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

Article 10. Indemnification, Waiver of Claims and Insurance

10.01 Indemnification.

10.01.1 Airline shall indemnify, defend and hold harmless City, its officers, officials, agents, employees and volunteers (each an "Indemnitee") from and against all third-party claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, costs of claim processing, investigation, and litigation, and reasonable attorney's fees (collectively referred to hereinafter as "Claims") whether or not meritorious, for bodily injury or personal injury, including death, or property damage, caused by or arising from, in whole or in part, the acts, errors, omissions, negligence, or alleged negligence of Airline, or any of Airline's directors, officers, agents, employees, volunteers, contractors or subcontractors.

10.01.2 This indemnification includes all Claims arising or recovered under the Workers' Compensation laws or arising out of the failure of Airline to comply with any federal, state

or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall be indemnified by Airline from and against all Claims, except to the extent same arise from the sole negligence of any Indemnitee. Airline shall be responsible for all primary loss investigation, defense, and judgment costs where this indemnification is applicable. This indemnification by the Airline shall extend, but not be limited to, the following:

(a) Construction by or through Airline of any improvements or any other work or thing done in, on or about the Leased Premises or any part thereof;

(b) Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Leased Premises, areas adjacent thereto or improvements thereon by or through Airline, or any nuisance made or suffered thereon, or any failure by Airline to keep the Leased Premises or space comprising a part thereof in a safe condition;

(c) Any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Leased Premises, areas adjacent thereto or improvements thereon, or any part thereof;

(d) Any lien or claim which may be alleged to have arisen against or on the Leased Premises, or improvements thereon, or any part thereof, or any of the assets of, or funds appropriated to, City, or any liability which may be asserted against City with respect thereto;

(e) Any acts or omissions of Airline, Airline's assignee or subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(f) Any failure on the part of Airline to pay rent or landing fees, or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease Agreement, and the exercise by City of any remedy provided in this Lease Agreement with respect thereto;

(g) Any tax which Airline is obligated to pay or cause to be paid, including any tax attributable to the execution, delivery or recording of this Lease Agreement.

10.01.3 The foregoing provisions shall survive the expiration or earlier termination of this Lease Agreement to the extent that the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

10.01.4 Airline shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Leased Premises at the sole risk of Airline, and, to the extent set forth above, hold City harmless from any loss or damage thereto by any cause whatsoever, except to the extent caused by the City or its employees', contractors', agents', or invitees' sole negligence or intentional misconduct. The obligations of Airline under this Lease Agreement shall not in any way be affected by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Lease Agreement.

10.01.5 In the event that any Claims are made or brought against City by reason of any Claim for which Airline is required to indemnify the City hereunder, then, upon demand by City, Airline, at its sole cost and expense, shall defend such Claims in City's name.

10.01.6 Notwithstanding the foregoing, City may engage its own attorneys to defend it or to assist in its defense, and Airline shall pay the reasonable fees and disbursements of such attorneys. City recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges that the terms and conditions of this Lease Agreement constitute good and valuable consideration provided by Airline in support of this indemnification in accordance with laws of the State of Arizona.

10.02 Waiver of Claims.

10.02.1 Airline hereby waives all claims or causes of action against City, its officers, officials, agents, employees and volunteers which it may now or hereafter have for damages to any property on, about, or related to the Airport, and for injuries or death to persons on, about or related to the Airport, from any cause or causes arising at any time, except from the sole negligence of City, its officers, officials, agents, volunteers or employees.

10.02.2 By way of example and not limitation, save and except as arises out of the negligent or willful act of City, its officers, or employees, Airline hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, or employees:

- (a) for loss, injury, or damage sustained by reason of any deficiency, impairment, and interruption of any water, electrical, gas, plumbing, air conditioning, or sewer service or system serving any portion of the Airport;
- (b) [reserved]; and
- (c) for any loss or damage to the property of, or injury or damage to Airline, its officers, employees, agents, contractors, or any other person whomsoever, from any cause or causes arising at any time because of Airline's use or occupancy of the Airline's premises or of the Airport, or its operations thereon (City will use its best efforts to control the activities of other users).

10.03 Insurance.

10.03.1 Insurance Requirements. In addition to such insurance as may be required by law or regulation, Airline, at its sole cost and expense, shall maintain in full force and effect throughout the term of this Lease Agreement the insurance coverages, limits and endorsements required herein. The insurance requirements contained herein shall be minimum requirements for this lease and in no way limit the indemnification covenants contained in Article 10. Neither the insurance requirements nor the City's review or acceptance of insurance, shall in any manner limit or qualify the liabilities and obligations assumed by Airline hereunder.

10.03.1.1 Minimum Scope and Limits of Insurance.

(a) Aircraft Liability Insurance. Airline shall maintain Aircraft Liability Insurance with respect of all aircraft owned, leased or operated by Airline for bodily injury (including

death) and property damage liability at limits in accordance with Code of Federal Regulations Title 14 Part 205. Coverage shall include Airport premises, all ground operations, including Ramp and Taxiway, Aircraft Products and Completed Operations.

(b) Commercial General Liability Insurance - Occurrence Form. Airline shall maintain Commercial General Liability Insurance at limits of not less than \$5,000,000 Combined Single Limit per occurrence for Personal Injury, Bodily Injury (including death) and Property Damage Liability and shall include, but not be limited to Premises and Operations, Personal Injury, Products-Completed Operations, and Contractual. Fire Damage (Damage to Rented Premises) shall be not less than \$100,000. In the event Airline operates a VIP Room, an endorsement or separate coverage for Liquor Liability shall be maintained at \$1,000,000. Coverage shall be provided on a primary basis.

(c) Business Automobile Liability Insurance. Airline shall maintain Business Automobile Liability Insurance covering all Owned, Hired, and Non-Owned Vehicles used on the Airport in an amount of not less than \$1,000,000 Combined Single Limit per occurrence for Bodily Injury (including death) and Property Damage Liability; provided however, that if the scope and conduct of Airline's operations under this Lease Agreement require vehicle access to the Ramp Area, Airline shall maintain Business Automobile Liability Insurance in an amount no less than \$5,000,000 Combined Single Limit per occurrence for Bodily Injury (including death) and Property Damage Liability. Notwithstanding the foregoing, if the scope and conduct of Airline's operations under this Lease Agreement do not involve the operation, ownership or use of any vehicle, then this requirement shall include automobile liability for Hired and Non-Owned vehicles only.

(d) Workers Compensation Insurance. Airline shall maintain Workers Compensation and Employers Liability insurance written in accordance with the laws of the State of Arizona providing coverage for any and all employees of Airline. Coverage shall include Employers liability with minimum limits of \$500,000 each accident, \$500,000 Disease-Policy limit and \$500,000 Disease-Each Employee. Coverage shall include Broad Form All States Endorsement and Waiver of Subrogation in favor of City of Flagstaff. In the event Airline subcontracts any portion of the work or services under this Lease Agreement to another party, Airline shall be responsible for ensuring its subcontractors maintain Worker's Compensation & Employers Liability Insurance. Evidence of self-insurance in the State of Arizona as approved by the State's Industrial Commission may be substituted.

10.03.2 Other Insurance Requirements. All policies shall contain the following provisions:

(a) Additional Insured Endorsement. Except for Workers Compensation/Employer's Liability Insurance, Personal Injury Liability and Aviation Products Liability:

(i) The City of Flagstaff, its officers, officials, and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Leased Premises subject to this Lease Agreement and activities performed by or on behalf of

Airline, including products and completed operations of Airline; and automobiles owned, leased, hired or borrowed by Airline.

(ii) The City of Flagstaff, its officers, officials, agents, employees and volunteers, shall be named as additional insureds to the full limits of liability purchased by Airline even if those limits of liability are in excess of those required by this Lease Agreement.

(b) Airline's insurance coverage shall be primary insurance with respect to City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Airline's insurance and shall not contribute to it.

(c) Airline's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(d) Workers' Compensation policy shall contain a waiver of subrogation against the City of Flagstaff, its officers, officials, agents, employees and volunteers for losses arising from Airline's operations, occupancy and use of the Leased Premises subject to this Lease Agreement.

10.04 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to City. Such notice shall be sent directly to the Airport Director as provided in Section 15.03 herein.

10.05 Acceptability of Insurers. Airline shall obtain insurance coverage hereunder with insurers duly licensed, or approved unlicensed companies, in the State of Arizona and with a "Best's" rating of not less than A-: VII or a comparable rating from a comparable rating service. City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Airline from potential insurer insolvency. The City recognizes that a self-insurance layer may be substituted.

10.06 Verification of Coverage. A signed Certificate or Certificates of Insurance, evidencing that required insurance coverage(s) has been procured or maintained by Airline in the types and amount(s) required hereunder, shall be delivered to City prior to the effective date of Lease Agreement. The Certificate(s) of Insurance shall clearly state that the City of Flagstaff is an "Additional Insured" as required herein. Certificate(s) of insurance shall also endeavor to provide thirty (30) days written notice to City prior to cancellation (ten (10) days for nonpayment of premium) or non-renewal of coverage. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

10.06.1 Required insurance shall be subject to the review, acceptance, and approval of City, at its reasonable discretion, as to form and types of coverage. City's failure to maintain all insurance policies required herein shall constitute a material default of the Lease

Agreement by Airline, entitling City to exercise any remedies available to it under this Lease Agreement, at law and in equity, including the right to terminate this agreement. All certificates of insurance shall be sent directly to the Airport Director as set forth in Section 15.03 hereof.

10.07 Self-Insurance. The City may allow insurance coverage required herein to be provided by Airline's self-insurance plan, subject to prior written approval of City's Risk Management Division.

10.08 Deductibles, Coinsurance and Self-Insured Retention. Airline shall be fully and solely responsible for any deductible, or self-insured retention, including any losses, damages or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

10.09 Approval. Any modification or variation from the insurance requirements in this Lease Agreement shall have the prior approval of the City's Risk Manager. Such action shall not require a formal Lease Agreement amendment but may be made by administrative action.

10.10 Policy Review and Adjustment. City, by and through its Risk Management Division, reserves the right to periodically review any and all policies of insurance and to reasonably adjust the limits of coverage required hereunder from time to time throughout the term of this Lease Agreement. City may reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally in such event, City shall provide Airline written notice of such adjusted limits or rejection and Airline shall comply within ninety (90) days of receipt thereof. Airline shall be responsible for any premium revisions as a result of any such reasonable adjustment.

10.11 Invalidation of Policies. Airline shall not knowingly use or permit the use of the premises for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Airline's premises or airport or airline. In the event Airline's acts or failure to act shall cause cancellation of any policy, then Airline shall immediately, prior to notification by City, take such action as is necessary to reinstate or replace the required insurance.

10.12 No Representation of Coverage Adequacy. Airline acknowledges the limits, coverages and endorsements required by Article 10 are intended to minimize liability for City. Airline agrees that it will not rely upon the requirements of this Article 10 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Airline against any loss exposures, whether as a result of this Lease Agreement or otherwise.

Article 11. Reservation of Rights

11.01 Right to Enter. City shall have the right to enter the Exclusive Use Premises at reasonable times for the purpose of inspection to determine compliance with Airline's covenants herein upon no less than twenty-four (24) hours' prior notification to Airline. City shall have the right to enter the Exclusive Use Premises immediately and without notification, if an emergency exists and the entry is necessary to protect life or property.

11.02 Airport Development and Expansion. City reserves the right to further develop, improve and expand the landing area or any other area, building or other improvement within the

present or future boundaries of the Airport as it sees fit in its sole judgment, regardless of the desires or views of Airline and without interference or hindrance by Airline.

11.02.1 Further, the City retains the absolute right to maintain, repair, develop, improve and expand the Terminal, or any other Airport facility, Airport improvement or Airport property free from any and all liability to Airline for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development, improvement or expansion.

11.03 Maintenance and Repair. City shall have the right to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, including but not limited to, such areas that are necessary to serve the aeronautical users of the Airport, other than as may be leased to or under the control of other Airport tenants, together with the right to direct and control all activities of Airline in this regard.

11.04 Airspace. There is hereby reserved to City and 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 Terminal, including but not limited to the right to cause or allow in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation at the Airport, without liability or obligation of any kind.

Article 12. Termination

12.01 Termination by City.

12.01.1 Termination for Cause. Airline acknowledges and agrees that City may, at its option, upon the occurrence of any of the following events, upon thirty (30) days' prior written notice, terminate this Lease Agreement and, enter into and upon the Leased Premises or any part thereof and repossess the same and expel Airline and any persons claiming by, through or under Airline, and remove its or their property and effects, if any, forcibly if necessary, from the Leased Premises or elsewhere at the Airport, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or breach of any provision of this Lease Agreement:

(a) If Airline shall be in arrears in the payment of any rent or fee due under this Lease Agreement for a period of thirty (30) days or more following City's written notice to Airline;

(b) The failure, refusal or neglect of Airline to perform any of the covenants, terms and conditions of this Lease Agreement (other than payment of rent or fee and continuous operation of Airline's business operations), and the failure or neglect continues for a period of at least thirty (30) days after City has notified Airline in writing of the failure or neglect, or, in the event that the failure or neglect cannot be completely corrected within the thirty (30) day period, if Airline has not actively begun correcting the failure or neglect within the thirty (30) day period;

(c) The voluntary abandonment by Airline of the Leased Premises or its operations at the Airport for a period of sixty (60) days or more;

(d) The seizure or taking of possession for a period of thirty (30) days or more, of all or substantially all of the property used on the Airport premises belonging to Airline by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

(e) The filing of any lien against the Leased Premises because of any act or omission of Airline which is not discharged or contested in good faith (as City shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of the lien by Airline;

(f) Airline's willful falsification of any of its business records or books with the intent of depriving City of any rents, fees or other rights under the terms of this Lease Agreement;

(g) Any permanent injunction of Airline's conduct of business on the Airport premises by a court of final jurisdiction; provided, however, that if Airline is temporarily enjoined from doing business at the Airport, any resulting cessation of business by Airline so long as the injunction remains in effect shall not be considered a breach of this Lease Agreement or cause for termination by City, unless and until the injunction becomes permanent.

12.01.2 Termination Without Cause. In addition to any other rights of termination City may have under this Lease Agreement, City may, at any time that City is not in default, terminate this Lease Agreement without cause by giving Airline ninety (90) days' prior written notice of termination.

12.02 Termination by Airline.

12.02.1 Termination for Cause. In addition to any other rights of cancellation it may have under this Lease Agreement or by law, Airline may, at any time that Airline is not in default, terminate this Lease Agreement at its option by giving City thirty (30) days' prior written notice of termination, upon the occurrence of any of the following events:

(a) An order or action by the FAA or any other governmental authority substantially terminating Airline's right to conduct its operations at the Airport;

(b) The issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of the Airport as an airport, or Airline's business operations at the Airport;

(c) A national emergency resulting in a curtailment of the use of aircraft and/or motor vehicles by the general public, or a limitation of the supply of gasoline and/or aircraft fuel available to general use either by executive decree or legislative action, which results, in fact, in a substantial curtailment of Airline's business operations at the Airport;

(d) A breach by City of any material covenant of this Lease Agreement, which remains uncured for a period of thirty (30) days following written notice of the breach to City, or, in

the event that the breach cannot be completely cured within the thirty (30) day period, if City has not actively begun curing the breach within the thirty (30) day period;

(e) Airline's inability to use the Leased Premises or to conduct its business operations at the Airport due to City's failure to maintain the Airport, and/or to unsafe conditions at the Airport; or

(f) The seizure or other assumption of control of the Airport by any governmental entity other than City.

12.02.2 Termination Without Cause. In addition to any other rights of termination Airline may have under this Lease Agreement, Airline may, at any time that Airline is not in default, terminate this Lease Agreement without cause by giving City ninety (90) days' prior written notice of termination.

12.03 Property Upon Termination.

12.03.1 Condition of Leased Premises. Airline covenants and agrees that upon any termination of this Lease Agreement, however caused, Airline shall quit and surrender the Leased Premises, and perform all repairs of the Leased Premises reasonably necessary to restore the Leased Premises to substantially the same condition it was in at the time this Lease Agreement was entered into, reasonable wear and tear excepted.

12.03.2 Fixtures. All fixtures installed and permanently affixed to the realty of the Leased Premises or the Airport property during the term of this Lease Agreement shall become and remain the property of City. All signs, decorations, fixtures and equipment, which Airline may install during the term of this Lease Agreement that have not been permanently attached to the Leased Premises or the Airport property shall remain the property of Airline.

12.03.3 Removal of Personal Property. Within thirty (30) days of any termination of this Lease Agreement, however caused, Airline shall remove from the Leased Premises all signs, decorations, equipment, trade fixtures and other personal property belonging to Airline, its agents, contractors, assignees or subcontractors, if any, that have not been permanently attached to the Leased Premises, or to any part of the Airport property.

Article 13. Remedies

13.01 Statutory Remedies. In addition to any other remedies provided in this Lease Agreement, City shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are hereby incorporated by reference into this Lease Agreement, as if the same were set forth in their entirety, upon the occurrence of any of the events set forth therein.

13.02 Remedies Cumulative. The remedies of City set forth in this Lease Agreement shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in the event of Airline's breach of any provision of this Lease Agreement in addition to any other remedies set forth in this Lease Agreement, City shall be

entitled to specific performance and to restraint by injunction of any breach, or attempted or threatened breach, of any of the terms, covenants, conditions or other provisions of this Lease Agreement.

Article 14. General Provisions

14.01 Airport Representative. City designates the Airport Director as its representative to administer this Lease at the Airport.

14.02 Quiet Enjoyment. City represents that it has the right to lease the Leased Premises together with the facilities, rights, licenses and privileges granted in this Lease Agreement, and has full power and authority to enter into this Lease Agreement. City agrees that upon payment of the rent and performance of the covenants of this Lease Agreement by Airline, Airline shall peaceably have and enjoy the Leased Premises and all rights and privileges of the Airport, its appurtenances and facilities as set forth in this Lease Agreement.

14.03 Inspection, Records, Administration.

14.03.1 Records. The City shall have the right to inspect and audit all Airline books and records related to the Lease Agreement for up to five (5) years after completion of the Lease Agreement.

14.03.2 Right to Inspect Business. The City shall have the right to inspect the place of business of the Airline or its subcontractor during regular business hours at reasonable times and upon prior reasonable notice, to the extent necessary to confirm Airline's compliance with the terms of this Lease Agreement.

14.03.3 Public Records. This Lease Agreement and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Airline has clearly marked its proprietary information as confidential, the City will endeavor to notify Airline prior to release of such information.

14.04 Drug Free Workplace. The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Airline personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Lease Agreement.

14.05 Conflict of Interest. Notwithstanding anything to the contrary contained in this Lease Agreement, the Parties acknowledge, in accordance with Arizona Revised Statutes § 38-511, that City may terminate this Lease Agreement upon written notice at any time within three (3) years of its execution without penalty or further obligation in the event that any person significantly involved in initiating, securing, drafting or creating this Lease Agreement on behalf of City shall become an employee or agent of Airline in any capacity or shall render consulting services to Airline with respect to the subject matter of this Lease Agreement.

14.06 Force Majeure. The performance of all covenants contained in this Lease Agreement, other than the covenants to pay rentals or other applicable fees or charges, shall be

postponed and suspended during any period in which a Party's performance is prevented by acts of God, accidents, abnormal weather and conditions arising from them; strikes, boycotts, lockouts and other labor troubles; riot, fire, earthquake, flood, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions; the exercise of paramount power by the federal government, either through the taking of the Leased Premises or the imposition of regulations restricting the conduct of business at the Leased Premises; acts of enemies, sabotage, terrorism, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency thereof, including any court of competent jurisdiction; inability to secure labor or adequate supplies of materials, products or merchandise; or any other delay or contingency beyond the reasonable control of the Party whose performance is so prevented or delayed. Any Party desiring to invoke force majeure shall provide written notice to the other Party no later than fifteen (15) days following such Party's knowledge of the occurrence of such event and prompt notice of the cessation of such event.

14.07 Notices. Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease Agreement shall be in writing and shall be effective and deemed received when hand-delivered or faxed or if sent by mail, three (3) business days after mailing, to the address given below for the Party to be notified or to such other address of which notice is given in accordance with this Lease Agreement:

If to City:

City of Flagstaff
Airport Director
6200 South Pulliam Drive, Suite 204
Flagstaff, AZ 86005
928-213-2930

If to Airline:

United Airlines, Inc.
Add Title/Contact
Add Address.

Add Phone Number

14.08 Non-Exclusivity; Competing Uses. Nothing contained in this Lease Agreement shall be construed to grant or authorize the granting of an exclusive right prohibited by federal law. The rights and privileges granted under this Lease Agreement are nonexclusive, and City has the right to grant to others the privilege and right of conducting any and all of the aeronautical activities listed in this Lease Agreement. Notwithstanding the foregoing, unless otherwise permitted by FAA, City covenants and agrees not to enter into any similar agreement with respect to the Airport which contains more favorable terms than are contained in this Lease Agreement, or to grant to potential competitors of Airline privileges not authorized in this Lease Agreement, unless the same are also extended to Airline.

14.09 Intention of the Parties. This Lease Agreement is intended solely for the benefit of City and Airline, and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done, or inspection of the Leased Premises performed by City is solely for the benefit of City and Airline.

14.10 Independence of Contract. Nothing in this Lease Agreement is intended or shall be construed as in any way creating a relationship of partners or joint ventures between the

Parties, or as constituting Airline as the agent or representative or employee of City for any purpose or in any manner whatsoever.

14.11 Waiver. The failure of either Party to insist in any instance upon a strict performance by Airline of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease Agreement, shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision of this Lease Agreement, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Lease Agreement constitute a waiver of any succeeding or other breach of this Lease Agreement. No waiver by City or Airline of any provision, term, covenant, reservation, condition or stipulation contained in this Lease Agreement, shall be deemed to have been made in any instance unless expressed in the form of a written waiver from the party, whether City or the Airline, giving such waiver.

14.12 Prior Agreements; Integration; Modification. The Parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease Agreement, and that this Lease Agreement constitutes the Parties' entire agreement with respect to the matters addressed. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged in this Lease Agreement. This Lease Agreement may be modified or amended only by written agreement fully executed by the Parties.

14.13 Severability. In the event that a court of competent jurisdiction holds any part or provision of this Lease Agreement invalid, void or of no effect, the remaining provisions of this Lease Agreement shall remain in full force and effect, provided that continued enforcement of such remaining provisions does not materially prejudice either Airline or City in their respective rights and obligations contained in any valid provisions of this Lease Agreement.

14.14 Headings. Headings or captions used in this Lease Agreement shall be used solely for convenience of the Parties, and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease Agreement.

14.15 Attorneys' Fees.

Except as otherwise agreed upon by the Parties, any litigation brought by either Party against the other Party to enforce the provisions of this Lease Agreement, shall be filed in Coconino County Superior Court, Flagstaff, Arizona. In the event that any action at law, or in equity, is instituted between the Parties in connection with this Lease Agreement, the prevailing Party in the action shall be entitled to an award of costs, including reasonable attorney's fees and court costs, from the non-prevailing Party.

14.16 Governing Law and Jurisdiction. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

14.17 Non-Exclusivity. Nothing contained herein shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1985 as amended (49 USC 1349a). The rights and privileges granted hereunder are non-exclusive and

City has the right to grant to others the privilege and right of conducting any and all of the aeronautical activities listed herein.

DRAFT

IN WITNESS WHEREOF

The parties have caused this Lease Agreement to be executed as of the effective date indicated above in Article 2.

CITY OF FLAGSTAFF

UNITED AIRLINES, INC.

By:

By:

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

DRAFT