

**AIRLINE-AIRPORT USE AND LEASE AGREEMENT**

FOR

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

BY AND BETWEEN

**LEE COUNTY PORT AUTHORITY**

AND

**DELTA AIR LINES, INC.**

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## LIST OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
Exhibit A	Airport Boundaries
Exhibit B	Airline's Premises
Exhibit C	Drawings of Airline's Premises
Exhibit D	Responsibilities of AUTHORITY and AIRLINE for Operation and Maintenance of the Terminal
Exhibit E	Sample Monthly Reporting Form
Exhibit F	Changes in Rates for Rents, Fees and Charges
Exhibit G	Summary of Terminal Areas



## AIRLINE-AIRPORT USE AND LEASE AGREEMENT

THIS AIRLINE-AIRPORT USE AND LEASE AGREEMENT (the “Agreement” or the “New Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by and between the Lee County Port Authority, hereinafter referred to as “AUTHORITY”, and **DELTA AIR LINES, INC.**, a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as “AIRLINE.”

### Background

AUTHORITY has the custody, control and management of Southwest Florida International Airport (the “Airport”), located in Lee County, Florida, under grant of authority by legislative act of Lee County, Florida, owner of the Airport, and has the right to lease, license, or otherwise provide for the use of land, property and facilities of the Airport System and has full power and authority to enter into this Agreement in respect thereof.

AIRLINE is engaged in the business of transportation by air of persons, property, mail, parcels and/or cargo.

AIRLINE and AUTHORITY are parties to an “Airline-Airport Use and Lease Agreement” dated November 10, 2008, as amended September 9, 2013, June 27, 2019, June 25, 2020, January 20, 2022, and January 19, 2023 (the “Prior Agreement”) scheduled to expire September 30, 2023, and desire to extend the terms of said Prior Agreement by one year, to September 30, 2024, and to replace said Prior Agreement with this New Agreement effective October 1, 2024.

AIRLINE and AUTHORITY are entering into this Agreement, to specify the rights and obligations of the parties with respect to the use of the Airport and the occupancy of certain space therein by AIRLINE;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, AUTHORITY and AIRLINE do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

## ARTICLE 1: DEFINITIONS

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

1.01 Additional Concourse E Protection shall mean additional charges assessed to AIRLINE pursuant to item D of Section 7.10 below.

1.02 Affiliate shall mean an Air Transportation Company that: (i) is AIRLINE's parent company; (ii) is a subsidiary of AIRLINE or its parent company; (iii) operates at the Airport under AIRLINE's trade name and uses AIRLINE's two-letter designator code for its flights serving the Airport; or (iv) operates at the Airport under a trade name of AIRLINE'S parent or subsidiary and uses the two-letter designator code of such parent or subsidiary for its flights serving the Airport.

1.03 Agreement shall mean this Airline-Airport Use and Lease Agreement between AUTHORITY and AIRLINE, as the same may be amended, modified or altered from time to time pursuant to the terms hereof.

1.04 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.

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

1.06 Airfield shall mean those portions of the Airport, excluding the Terminal 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 property purchased for noise mitigation purposes, as may be revised from time to time.

1.07 Airfield Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, O&M Reserve Requirement, and operating Revenues allocated to the Airfield and such reasonable portion of the Terminal Aircraft Aprons as is allocated by the AUTHORITY.



1.08 AIRLINE shall mean the Air Transportation Company executing this Agreement.

1.09 Airline Premises shall mean the Joint Use Premises, and the areas in the Terminal assigned to AIRLINE as Exclusive Use Premises or Preferential Use Premises, as those terms are defined herein.

1.10 Airport shall mean Southwest Florida International Airport, including the Mitigation Park associated with the permitting therefore, owned by Lee County, Florida and operated by AUTHORITY, under grant of authority by legislative act of Lee County, Florida.

1.11 Airport Fund shall mean the Airport Fund as defined in the Bond Resolution.

1.12 Airport Affairs Committee (AAC) shall mean collectively the authorized representatives of each Signatory Airline which shall meet from time to time with representatives of AUTHORITY to receive information and provide input with regard to selected operation and development matters of the Airport.

1.13 Airport System shall mean all real property or any interest therein, including improvements thereto, structures, buildings, fixtures, and other personal property, which are located on the Airport, Page Field, Mitigation Park, or any airport hereafter owned, leased or operated by AUTHORITY.

1.14 Amortization shall mean the annual amortization of each Recognized Net Investment made by AUTHORITY after September 30, 2022, with AUTHORITY's funds (i.e., any funds other than Bond proceeds, proceeds from insurance resulting from casualty damage to or destruction of improvements on the Airport, federal or state grant funds, and PFCs), in lieu of the AUTHORITY borrowing such amounts, for new Capital Expenditures on the Airport, with the amount of each such investment amortized on a straight line basis, with interest computed at AUTHORITY's interest cost, over a period determined by the Authority based on its expected useful life, commencing in the Fiscal Year immediately following the earlier of the issuance of a certificate of occupancy, the date of Substantial Completion, or the date of acquisition, with such principal and interest amounts together representing equal annual payments AUTHORITY would have been responsible for paying had the AUTHORITY funded such Recognized Net Investment with borrowed funds rather than its own funds.

1.15 AUTHORITY shall mean the Lee County Port Authority, a body politic and corporate, created by Special Act of the Legislature, Chapters 63-1541, Laws of Florida, and Chapters 125 and 322, Florida Statutes, and further implemented and authorized to exercise the powers outlined in those acts in 1990 by Lee County Ordinance No. 90-02, as amended and later codified and restated as Lee County Ordinance No. 01-014, adopted on September 10, 2001. The Authority is responsible for operations, management, and development of properties, facilities, and systems and personnel associated with air or sea transportation or commerce located in Lee County.

1.16 Baggage Claim Area means the publicly accessible bag claim area on the ground floor of the Airport's Terminal building. The parties agree that, regardless of actual variations, for purposes of calculations pursuant to Exhibit F, the Airport's Baggage Claim Area will be deemed to be 73,992 square feet, unless and until the AUTHORITY determines, in its sole discretion, that a different area will be applied due to physical changes to the Terminal which increase or decrease said area.

1.17 Baggage Handling System Cost Center (or BHS Cost Center) shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), direct and indirect O&M Expenses, Amortization, O&M Reserve Requirement, and operating Revenues allocated to the Baggage Handling System.

1.18 Board shall mean the Authority's Board of Port Commissioners.

1.19 Bond Resolution shall mean Resolution No. 00-03-04, adopted by the Board of County Commissioners of Lee County, Florida ("BOCC"), on March 13, 2000, as amended and supplemented (the "Master Resolution"), particularly as supplemented by Resolution No. 20-06-30 adopted by the BOCC on June 25, 2020 (the "PFC Resolution") and Resolution No. 21-09-32, adopted by the BOCC on September 21, 2021 (the "2021B Series Resolution") and together with the Master Resolution and the PFC Resolution, the "Bond Resolution"). The Authority has adopted a resolution concurring in the adoption of the Bond Resolution by the County and agreeing to be bound by and comply with all the terms, covenants and provisions of the Bond Resolution.

1.20 Bonds shall mean the Lee County Florida Airport Revenue Bonds issued pursuant to the Bond Resolution.



1.21 Capital Expenditure shall mean an expenditure, equal to or greater than \$300,000 (including expenses incurred for development, study, analysis, review, design, or planning), made to acquire, purchase or construct a single item or project for the purpose(s) of improving, maintaining or developing the Airport. Capital Expenditures shall include, but not necessarily be limited to, a Terminal expansion that initially includes a new 14 gate Concourse E and support facilities such as taxiways, ramp, aircraft fueling system, roadway/curb improvements, pedestrian walkways, chiller plant improvements, and other elements necessary to support said expansion.

1.22 Cost Centers shall mean those areas or functional activities of the Airport used for the purposes of accounting for Revenues, O&M Expenses, O&M Reserve Requirement, Amortization, and Investment Service.

1.23 Coverage shall mean twenty-five percent (25%) of the Debt Service payable on Bonds in each Fiscal Year.

1.24 Current Expenses means, for any period, all reasonable and necessary expenses paid or accrued by the County or the Authority on a consistent basis in accordance with generally accepted accounting principles applicable to governmental entities consistently applied for the maintenance, repair, and operation of the Airport and shall include, without limiting the generality of the foregoing, (1) all ordinary and usual expenses of maintenance, repair and operation; (2) all administrative expenses and any reasonable payments to pension or retirement funds properly chargeable to the Airport (which does not include Page Field); (3) insurance premiums; (4) professional service expenses relating to maintenance, repair and operation of the Airport; (5) fees and expenses of the Paying Agent; (6) legal and other professional fees and expenses; (7) fees of consultants; (8) fees, expenses and other amounts payable to any bank or other financial institution for the issuance of a letter of credit, stand—by-purchase agreement or any other Credit Facility, and to any indexing agent, Depository, remarketing agent or any other person or institution whose services are required with respect to the issuance of Bonds; (9) any taxes which may be lawfully imposed on the Airport or the income therefrom and reserves for such taxes; (10) deposits required under the Bond Resolution to be made to any Account in the Tax Rebate Fund to fund the County's accrued, but unpaid, liability to make payments to the United States of America imposed by Section 148(t) of the Code; and (11) and other reasonable expenses authorized by law; provided, however, Current Expenses shall not include (a) any allowance for amortization or depreciation or any reserves for extraordinary maintenance and repair of the Airport except to the extent the County or the Authority receives payment or reimbursement therefore and includes such payment or reimbursement in Revenues; (b) any other expenses for which (or to the extent to which) the

County or the Authority is or will be paid or reimbursed from or through any source and such payment or reimbursement is not included as Revenues; (c) any extraordinary items arising from the early extinguishment of debt; and (d) any prior period or retroactive adjustments which are required by a change in accounting principles or standards.

1.25 Debt Service shall mean any principal, interest, premium, and other fees and amounts either paid or accrued for Bonds, and such other accounts which may be established for payment of principal, interest, premium and other fees and amounts associated with Subordinated Indebtedness, excluding however any amounts paid or accrued for bonds used to finance or refinance projects funded by CFC revenues.

1.26 Deplaned Passenger shall mean any passenger disembarking an aircraft at the Terminal, including any such passenger that shall subsequently board another aircraft of the same or a different Air Transportation Company or the same aircraft, previously operating under a different flight number.

1.27 Enplaned Passenger shall mean any passenger boarding an aircraft at the Terminal, including any such passenger that previously disembarked from another aircraft of the same or a different Air Transportation Company, or from the same aircraft previously operating under a different flight number.

1.28 Exclusive Use Premises shall mean those portions of the Terminal assigned exclusively to AIRLINE, as set forth in Exhibit B, attached hereto.

1.29 Executive Director shall be the Executive Director of AUTHORITY, and shall include such person or persons as may from time to time be authorized in writing by AUTHORITY or by the Executive Director or applicable law to act for the Executive Director with respect to any or all matters pertaining to this Agreement.

1.30 Extraordinary Coverage Protection shall mean additional charges assessed to AIRLINE pursuant to item C of Section 7.10 below.

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

1.32 Fiscal Year shall mean the annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve consecutive months, ending with the last day of September of any year.



1.33 Gate, or Gate Position, means a designated aircraft parking position at the Terminal, and includes the associated holdroom area, passenger loading bridge, pre-conditioned air, and 400 Hertz systems.

1.34 Investment Service shall mean, with respect to any Fiscal Year, the sum of (1) Debt Service (exclusive of capitalized interest) and Other Debt Service payable by AUTHORITY in that Fiscal Year; plus (2) Coverage.

1.35 Joint Use Formula shall mean the formula set forth in item 3, and Table F-4, of Section II of Exhibit F, which allocates, for each Fiscal Year, the annual cost of the Terminal's Joint Use Premises amongst the Air Transportation Companies using the Joint Use Premises, with twenty percent (20%) of the Signatory Airlines' share of such cost allocated equally to all Signatory Airlines, and eighty percent (80%) of the Signatory Airlines' share of such cost allocated amongst the Signatory Airlines on the basis of each Signatory Airline's share of the Signatory Airlines' combined Enplaned Passengers. For purposes of this calculation: (a) the number of each Signatory Airline's Enplaned Passengers will include the Enplaned Passengers of all Designated Affiliates of such Signatory Airline; and (b) all Designated Affiliates of a Signatory Airline shall be combined with such Signatory Airline and together counted as a single Signatory Airline.

1.36 Joint Use Premises shall mean the Terminal's Baggage Claim Area, TSA Baggage Screening Space, and TSA Security Checkpoint Space.

1.37 Landing Fee shall mean a fee, expressed in dollars and cents, per thousand pounds of the Maximum Gross Landing Weight of each type of AIRLINE's aircraft.

1.38 Maximum Gross Landing Weight shall mean the maximum gross certificated landing weight, in one thousand pound units, for which each aircraft operated at the Airport by AIRLINE is certificated by the FAA.

1.39 Minimum Average Gate Utilization means an average of four (4) turns per day per preferential use gate.

1.40 Minimum Annual Guarantee means \$1,250,000.00 per Fiscal Year. For any partial Fiscal Year, the Minimum Annual Guarantee will be prorated.

1.41 Net Requirement shall, with respect to the Terminal Cost Center, Airfield Cost Center, and BHS Cost Center, have the meaning defined in Exhibit F for each such Cost Center.

1.42 Non-Airline Revenues shall mean those rents, fees and charges received by AUTHORITY from Airport lessees, permittees, concessionaires, users, and patrons other than Scheduled Air Carriers.

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

1.44 Operating Expenses (O&M Expenses) shall mean Current Expenses, paid or accrued, for operation, maintenance, and repairs of the Airport, and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of the Authority relating solely to the Airport, including engineering, architectural, legal, airport consultants, and accounting fees and expenses, and fees and expenses of the Trustee, and such other reasonable expenses as shall be in accordance with sound accounting practice, excluding only allowance for depreciation, Capital Expenditures, any operating expenses of "Special Purpose Facilities" (as that term is defined in the Bond Resolution) where the lessees thereof are obligated to pay such operating expenses, and any operating expenses to which the Authority applies rental car facility charge (CFC) funds.

1.45 Operating Expenditure Reserve Requirement (O&M Reserve Requirement) shall mean the Bond Resolution requirement that a reserve be created and maintained at an amount not more than one-fourth (1/4) of the annual budget then in effect for O&M Expenses.

1.46 Other Debt Service shall mean any principal, interest, premium, and other fees and amounts, either paid or accrued, on Other Indebtedness of AUTHORITY.

1.47 Other Indebtedness shall mean any debt incurred by AUTHORITY for Airport purposes which is outstanding and not authenticated and delivered under and pursuant to the Bond Resolution, or any Subordinated Bond Resolution.

1.48 Passenger Facility Charge (PFC) shall mean the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be



amended during the Term of this Agreement.

1.49 Period of Use means: (a) for an arriving flight, the period beginning 30 minutes prior to the scheduled arrival and ending on the earlier of (i) the completion of the deplaning process or (ii) 60 minutes after the scheduled arrival; and (b) for a departing flight, the period beginning 60 minutes prior to the scheduled departure (90 minutes for international departures), and ending on the earlier of (i) the aircraft's actual departure, or (ii) 30 minutes after the scheduled departure.

1.50 Preferential Use Premises shall mean the following, to the extent they are assigned to AIRLINE for its non-exclusive use, as shown in Exhibit B, attached hereto, to which AIRLINE shall have certain priority over other users as set forth in Article 16:

- (a) gate position(s), also referred to herein as gate(s), including associated portions of the Terminal and Terminal Aircraft Aprons;
- (b) ticket counter space; and
- (c) baggage make up space (also referred to as "BMU").

1.51 Recognized Net Investment shall mean AUTHORITY's cost of an improvement or an acquisition made on or for the Airport (including without limitation the cost of construction, testing, architects' and engineers' fees, consultants' fees, construction management fees, inspection and surveillance by AUTHORITY engineer, condemnation, relocation expenses, brokers' fees), equal to or greater than \$100,000, reduced by the amount of any federal or state grant or PFC received by AUTHORITY therefore, beginning in the Fiscal Year in which the improvement or acquisition is completed.

1.52 Revenue Landing shall mean any aircraft landing by AIRLINE at the Airport for which AIRLINE receives revenue, including flights diverted from another airport to the Airport due to meteorological reasons.

1.53 Revenues shall mean income accrued by AUTHORITY 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 in any event excluding: (i) federal, state, or local grant-in-aid funds (i.e. grants received); (ii) PFCs (except to the extent spent on Debt Service); (iii) rental car facility charges ("CFCs"); (iv) proceeds from the sale or taking by eminent domain of any part of the Airport System; and (v) interest or investment earnings earned therefrom (i.e. those items listed in the preceding subsections (i) through (iv)).

1.54 Scheduled Air Carrier shall mean any Air Transportation Company performing or desiring to perform, pursuant to published schedules, seasonal or non-seasonal commercial air transportation services over specified routes to and from the Airport and holding the necessary authority from the appropriate federal or state agencies to provide such transportation.

1.55 Signatory Airline shall mean an Air Transportation Company that signs, and has then in force with the Authority, an agreement substantially similar to this Agreement.

1.56 Subordinated Indebtedness shall mean any bonds or other financing instrument or obligation subordinate to the Bonds, issued pursuant to any Subordinated Bond Resolution.

1.57 Subordinated Bond Resolution shall mean a bond resolution subordinated to the Bond Resolution authorizing the issuance by AUTHORITY of Subordinated Indebtedness, as such may be supplemented or amended from time to time.

1.58 Substantial Completion shall mean the date on which AUTHORITY's architects and/or engineers certify any premises at the Airport to be substantially complete as to permit use and occupancy by AIRLINE, or the date AIRLINE actually takes occupancy of the premises, whichever comes first.

1.59 Term shall mean the period of time during which AIRLINE's activities at the Airport shall be governed by this Agreement. Said Term shall begin on the Effective Date as defined in Section 3.01, and, except as otherwise set forth herein, terminate on the date set forth in Article 3.

1.60 TSA shall mean the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

1.61 TSA Baggage Screening Space means the areas in the Terminal which are utilized by the TSA for security check screening of baggage. The parties agree that, regardless of actual variations, for purposes of calculations pursuant to Exhibit F, the Airport's TSA Baggage Screening Space will be deemed to be 15,541 square feet, unless and until the AUTHORITY determines, in its sole discretion, that a different area will be applied due to physical changes to the Terminal which increase or decrease said area.



1.62 TSA Security Checkpoint Space means the areas in the Terminal which are utilized by the TSA for security check screening of passengers. The parties agree that, regardless of actual variations, for purposes of calculations pursuant to Exhibit F, the Airport's TSA Security Checkpoint Space will be deemed to be 23,190 square feet, unless and until the AUTHORITY determines, in its sole discretion, that a different area will be applied due to physical changes to the Terminal which increase or decrease said area.

1.63 Terminal Aircraft Aprons shall mean those areas of the Airport that are designated for the loading and unloading of passenger aircraft to and from the passenger Terminal building.

1.64 Terminal shall mean the Airport's passenger terminal building.

1.65 Terminal Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, O & M Reserve Requirement, and operating Revenues allocated to the Terminal and other related and appurtenant facilities, whether owned, operated, or maintained by the Authority, an airline, or another tenant; and such reasonable portion of the enplanement and deplanement roadways in front of the Terminal as is allocated by the AUTHORITY.

1.66 Total Rentable Space means the number of square feet of space in the Terminal that is rentable to tenants, including office and administrative space used by AUTHORITY. The parties agree that, regardless of actual variations, for purposes of calculations pursuant to Exhibit F, the Total Rentable Space is 427,798 square feet, unless and until the AUTHORITY determines, in its sole discretion, that a different area will be applied due to physical changes to the Terminal which increase or decrease said area.

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



## **ARTICLE 2: EXTENSION OF PRIOR AGREEMENT**

2.01 Extension of the Prior Agreement. The expiration date of the Prior Agreement shall be extended to September 30, 2024.

### **ARTICLE 3: TERM**

3.01 Effective Date and Initial Term. The Initial Term of this New Agreement shall commence October 1, 2024 (the “Effective Date”), and terminate September 30, 2034, unless sooner terminated as provided herein.

3.02 Holding Over. In the event AIRLINE uses its Airline Premises without the written consent of AUTHORITY after this New Agreement has been terminated or has expired, AIRLINE shall be deemed a tenant at sufferance during the period of such use, and, unless Authority shall demand a different amount or amounts, shall pay the rate for rents, fees, and charges established by AUTHORITY for Air Transportation Companies which are not Signatory Airlines during such period.

## ARTICLE 4: PREMISES

### 4.01 Airline Premises.

A. AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, the Exclusive Use Premises set forth in Exhibit B.

B. AUTHORITY does hereby assign to AIRLINE, for its preferential use, subject to Article 16 below, the gate position (or positions), ticket counter space, and Baggage Makeup Space (BMU) designated on Exhibit B attached hereto.

C. Any changes to AIRLINE'S Exclusive Use Premises or Preferential Use Premises, shall be evidenced by a written amendment signed by both parties to this Agreement, except as otherwise set forth herein.

4.02 Terminal Equipment. Terminal equipment owned or acquired by AUTHORITY for use by AIRLINE shall remain the property and under the control of AUTHORITY.

4.03 Employee Parking. AUTHORITY will make the Airport's employee parking lot available for vehicular parking for AIRLINE's personnel employed at the Airport; provided, however, such area(s) shall not be used for the storage of vehicles or trailers; and usage is subject to fees pursuant to Section 7.07 below, and to reasonable and non-discriminatory rules and regulations established by AUTHORITY.

4.04 Federal Inspection Facilities. AUTHORITY shall designate areas in the Terminal, or elsewhere on the Airport, to be used by agencies of the United States for the inspection of international passengers and their baggage, and for the exercise of the responsibilities of said agencies with respect to the movement of persons, property, and cargo to and from the United States.

4.05 AIRLINE's Option to Relinquish Space. AIRLINE will have the option to relinquish and vacate any portion of its Exclusive Use Premises or Preferential Use Premises, effective September 30, 2029, by providing AUTHORITY at least ninety (90) days' advance written notice thereof, in which case such relinquished space will be deemed deleted from the AIRLINE Premises under this Agreement, provided, however, that: (1) the space so relinquished is configured

such that it retains reasonable access for ingress and egress and is otherwise reasonably useable by future tenants; and (2) the total amount of space so relinquished does not exceed 25% of the AIRLINE's Exclusive Use Premises and Preferential Use Premises, combined (for the purposes of this calculation, each Gate will be counted as 2,821 square feet, representing a typical gate position's passenger holdroom area).

## **ARTICLE 5: USE OF THE AIRPORT AND RELATED FACILITIES**

5.01 AIRLINE Rights and Privileges. In addition to all rights granted elsewhere in this Agreement, AIRLINE shall have the right to use, in common with others so authorized by AUTHORITY, areas, other than areas leased or assigned for preferential use to others, or occupied by the Authority or any federal agency, the facilities, equipment, and improvements at the Airport for the operation of AIRLINE's Air Transportation Business and all activities reasonably necessary to such operations, including but not limited to:

A. The landing, taking off, flying over, taxiing, towing, and conditioning of AIRLINE's aircraft and, in areas designated by AUTHORITY, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of AIRLINE's aircraft and support equipment subject to Paragraphs 5.01F, 5.01G, and 5.02C, and to the availability of space, and subject to such reasonable charges and regulations as AUTHORITY 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.

B. 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, freight, and express services, and reasonable and customary airline activities.

C. 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 unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. AUTHORITY 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 AUTHORITY.



D. The sale, disposition, or exchange of AIRLINE's aircraft, engines, accessories, gasoline, 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.

E. The purchase at the Airport or elsewhere, of fuels, lubricants, and any other supplies and services, from any person or company, subject to Paragraph 5.01D and to AUTHORITY's right to require that each provider of services and/or supplies to AIRLINE secures a permit from AUTHORITY to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases; provided, however, nothing herein shall be construed to permit AIRLINE to store aviation fuels at the Airport. Fuel tenders are prohibited on Terminal Aircraft Aprons serviced by the fuel hydrant system except by separate authorization of AUTHORITY. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

F. 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 Executive Director.

G. The loading and unloading of persons, property, cargo, parcels and mail by motor vehicles or other means of conveyance reasonably approved by AUTHORITY on or at Terminal Aircraft Aprons or such other locations as may be designated by the Executive 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 AUTHORITY.

H. 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 AUTHORITY.

I. The installation and maintenance, at AIRLINE's sole cost and expense, of identifying signs in AIRLINE's Exclusive Use Premises. Installation shall be subject to the prior written approval of the Executive Director and shall comply with the procedures in the AUTHORITY's Leasehold Development Standards. The general type and design of such signs shall be compatible with and not detract from the pattern and decor of the Terminal areas. Nothing herein shall be deemed to prohibit AIRLINE's installation on the walls behind ticket counters, inside baggage service offices, and on the exterior of loading bridges associated with preferentially assigned passenger boarding gates, of identifying and company logo signs as are customarily installed by AIRLINE in such areas at comparable airport facilities, subject to the prior written approval of AUTHORITY. However, AIRLINE shall not install any promotional displays or advertising displays in its Airline Premises unless authorized in writing, in advance, by the AUTHORITY.

J. The installation, maintenance, and operation, at no cost to AUTHORITY, of such radio communication, company telephone system, computer, meteorological and aerial navigation equipment, and facilities on AIRLINE's Exclusive Use Premises and Preferential 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 Executive Director. Prior to any written approval, AIRLINE shall provide the Executive Director with all necessary supporting documentation related to such installations. AIRLINE recognizes that AUTHORITY has installed airline-compatible multiuser flight information display systems and AIRLINE shall diligently proceed to use such systems and keep AIRLINE's flight data therein current and up to date at all times.

K. The use of designated airline cable trays, raceways, and 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 leased to AIRLINE, or assigned to AIRLINE for its preferential use, subject to the availability of space and/or ground areas as determined by the Executive Director. AUTHORITY reserves the right to require the execution of a separate agreement between AUTHORITY and AIRLINE for the lease or use of such space and/or ground area outside Terminal areas or to provide such service directly to AIRLINE.



L. The installation of personal property, including furniture, furnishings, supplies, machinery, and equipment, in AIRLINE's Exclusive Use Premises and Preferential Use Premises, as AIRLINE may deem necessary, useful or prudent for the operation of its Air Transportation Business. Title to such personal property shall remain with AIRLINE, subject to the provisions of this Agreement.

M. The construction of modifications, finishes, and improvements in Airline Premises as AIRLINE may deem necessary or prudent for the operation of its Air Transportation Business, subject to the provisions of Article 9.

N. AIRLINE shall have the right to ingress to 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 applicable laws relating to airport security, including but not necessarily limited to those set forth in or adopted pursuant to 14 CFR Part 1542, and the AUTHORITY's right in to establish reasonable and nondiscriminatory Rules and Regulations and Operating Instructions as set out in Section 18.08 governing: (i) 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 and Operating Instructions of AUTHORITY shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business. AUTHORITY 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. AIRLINE hereby releases and discharges AUTHORITY 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 done in accordance herewith.

O. The provision of food and beverages to AIRLINE's passengers, free of charge and at AIRLINE's sole cost and expense.

P. Installation and operation of vending machines in its non-public Exclusive Use Premises for the sole use of AIRLINE's employees, the type, kind, and locations subject to the prior written approval of the Executive Director.

Q. The rights and privileges granted to AIRLINE pursuant to this Article 5 may be exercised on behalf of AIRLINE by other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport, subject to all laws, rules, regulations, fees and charges and Article 7 and Article 15 as may be applicable to the activities undertaken.

R. AIRLINE may exercise on behalf of any other Air Transportation Company having an operating agreement or permit with AUTHORITY any of the rights granted 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 of Article 7, Article 15, and other provisions of this Agreement.

#### 5.02 Exclusions and Reservations.

A. Nothing in this Article 5 shall be construed as authorizing AIRLINE to conduct any business separate and apart from the conduct of its Air Transportation Business.

B. 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, sewage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport.

C. AIRLINE shall not knowingly do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If AIRLINE shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in AUTHORITY's insurance premiums, AIRLINE shall immediately remedy such actions and/or pay the increase in premiums, upon notice from AUTHORITY to do so.

D. Subject to Section 5.01P, AIRLINE shall not sell food or beverages to the public or to AIRLINE's employees or passengers, or 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 a separate written agreement between AIRLINE and the AUTHORITY.

E. AUTHORITY may, at its sole option, install or cause to be installed advertising and revenue generating devices, including vending machines, in Preferential Use Premises, or Joint Use Premises, provided, however, that such installations shall not unreasonably interfere with AIRLINE's operations authorized hereunder or substantially diminish the square footage contained in Airline Premises. AUTHORITY may also, at its sole option install or allow concessionaires to install and access pay telephones, ATMs, prepaid debit or credit card machines, currency exchange, baggage carts and dispensers, advertising, concessions, and any other items, improvements, or services, in any part of the Terminal not exclusively leased to AIRLINE, provided however that such installations shall not unreasonably interfere with AIRLINE's operations authorized hereunder or materially diminish the square footage contained in the Airline Premises.

F. The rights and privileges granted AIRLINE pursuant to this Article 5 shall be subject to any and all reasonable and nondiscriminatory Rules and Regulations and Operating Instructions established by AUTHORITY, and provided to AIRLINE, as the same may be amended from time to time, and to the provisions of Article 7.

G. AIRLINE will not engage in any activities on the Airport which are not specifically granted to AIRLINE pursuant to this Agreement.

#### 5.03 Airline Obligations.

A. AIRLINE will ensure that its employees are properly trained in the operation and use, including safety measures, of AUTHORITY-owned loading bridges, preconditioned air units, ground power units, or any other equipment utilized by AIRLINE.

B. AIRLINE will ensure that employees operating or using AUTHORITY's baggage handling system have received AUTHORITY-conducted training and have been issued AUTHORITY certification for the operation and use thereof. Such certification will at all times be displayed on the respective employee's airport identification badge or in such fashion as the AUTHORITY may require.

C. In the event an aircraft of AIRLINE is disabled on the Airfield or Terminal Aircraft Aprons, AIRLINE shall, as soon as possible, remove such aircraft to either an off-Airport location, or, if authorized in writing by the Executive Director, to a designated on-Airport location for temporary storage upon such terms and conditions as the Executive Director may reasonably determine. In the event an aircraft of AIRLINE is disabled on the Airfield or Terminal Aircraft Aprons such that it that prevents Airport operations, AUTHORITY reserves the right to immediately remove or cause the removal of such disabled aircraft, at AIRLINE's sole cost and expense and without liability for any damages resulting therefrom, except to the extent any such damages result from willful misconduct of AUTHORITY, its agents, employees, or contractors. AIRLINE shall also, upon request by AUTHORITY, promptly remove from the Airfield any equipment owned or operated by AIRLINE or its Designated Affiliate that is not, as determined by the AUTHORITY, regularly used in the maintenance and servicing of aircraft, at AIRLINE's sole cost and expense, or AUTHORITY may, following such request and AIRLINE's failure to so promptly remove such equipment, remove and dispose or store such equipment at AIRLINE's sole cost and expense and without liability for any damages resulting therefrom, except to the extent any such damages result from willful misconduct of AUTHORITY, its agents, employees, or contractors.

AIRLINE shall pay to AUTHORITY, upon receipt of invoice, the costs incurred for such removal and disposal or storage of such aircraft or equipment, plus fifteen percent (15%).

## **ARTICLE 6: OPERATION AND MAINTENANCE OF THE AIRPORT**

6.01 Designation of Operation and Maintenance Responsibilities. In addition to the obligations of AIRLINE and AUTHORITY set forth in this Article 6, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

### 6.02 AUTHORITY Obligations.

A. AUTHORITY shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a first class manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be AIRLINE's obligation pursuant to Section 6.03 and Exhibit D.

B. AUTHORITY shall, to the extent it is legally able so to do, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by AIRLINE.

C. AUTHORITY shall not be liable to AIRLINE for temporary failure to furnish all or any of such services to be provided in accordance with this Section 6.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by AUTHORITY's negligence or any other cause beyond the reasonable control of AUTHORITY.

D. AUTHORITY shall maintain (i) loading bridges owned by AUTHORITY; (ii) preconditioned air systems owned by AUTHORITY; (iii) associated aircraft ground power units owned by AUTHORITY; (iv) potable water cabinets owned by AUTHORITY, provided however that AIRLINE shall be responsible for maintaining water hoses associated with the potable water cabinets; (v) baggage conveyors owned and installed by AUTHORITY; (vi) lightning detection systems; and (vii) other systems that may be acquired by AUTHORITY in the future.

E. AUTHORITY shall, in the operation of the Airport, comply with all local, state and federal laws, rules and regulations.



6.03 AIRLINE Obligations.

A. AIRLINE shall, at all times, preserve and keep Airline Premises in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from AIRLINE's operations, provided, however, this requirement shall not be construed to mean AIRLINE shall have janitorial responsibilities designated to be those of AUTHORITY pursuant to Exhibit D.

B. AIRLINE shall keep, at its own expense, the space associated with its preferentially assigned gate or gates on the Terminal Aircraft Aprons free of fuel, oil, debris, and other foreign objects resulting from AIRLINE's operations.

C. AIRLINE shall operate and maintain at its own expense any improvements and/or equipment installed by AIRLINE for the exclusive use of AIRLINE.

D. Should AIRLINE fail to perform its material obligations hereunder, AUTHORITY shall have the right to enter the Airline Premises and perform such activities; provided, however, other than in a case of emergency, AUTHORITY shall give AIRLINE reasonable advance written notice of non-compliance, not to exceed ten (10) days, prior to the exercise of this right. If such right is exercised, AIRLINE shall pay AUTHORITY, upon receipt of invoice, the cost of such services plus ten percent (10%). Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to Section 12.01B.

## ARTICLE 7: RENTS, FEES, AND CHARGES

AIRLINE shall, monthly, pay AUTHORITY rents for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted or provided, for and during the Term of this Agreement, equal to the sum of the following:

- (1) Landing Fees, for each Revenue Landing by AIRLINE, as set forth in Section 7.01 below;
- (2) Terminal Rents, for AIRLINE's Exclusive Use Premises and Preferential Use Premises, as set forth in Section 7.02 below;
- (3) a Baggage Handling System Fee (BHS Fee), for the AIRLINE's use of the Baggage Handling System, as set forth in Section 7.03 below;
- (4) a Joint Use Fee, for AIRLINE's use of the Terminal's Joint Use Premises, as set forth in Section 7.04 below;
- (5) Common Use Charges, as set forth in Section 7.05 below;
- (6) FIS Fees, for AIRLINE's use of the Federal Inspection Services Facility ("FIS"), as set forth in Section 7.06 below;
- (7) an Employee Parking Lot Fee, for AIRLINE's use of the Employee Parking Lot facilities by its employees, as set forth in Section 7.07 below;
- (8) Badging Fees, for the AUTHORITY's handling of RSW security badging for AIRLINE's employees as set forth in Section 7.08 below;
- (9) Extraordinary Service Charges, as set forth in Section 7.09 below;
- (10) Other Fees and Charges, as set forth in Section 7.10 below; and
- (11) all other rents, fees, and charges set forth in this Agreement.

AUTHORITY will, after the end of each Fiscal Year (or partial Fiscal Year at the end of this Agreement), calculate all rents, fees, and charges paid or payable by AIRLINE under this Agreement for such period, and, to the extent such amounts were less than the Minimum Annual Guarantee, will deduct any remaining amount due to AUTHORITY from AIRLINE's refund (if any) described in Section 8.05 herein, to be credited against the Minimum Annual Guarantee, and, if there still remains any unpaid Minimum Annual Guarantee after such deduction and credit, will invoice AIRLINE for the remainder of the Minimum Annual Guarantee, which AIRLINE will pay to Authority within thirty (30) days of said invoice.



7.01 Landing Fees. The Landing Fees, payable monthly for AIRLINE'S Revenue Landings made in the preceding month, will be equal to the product of the Landing Fee rate for the period, calculated in accordance with 2.B., and Table F-2 therein, of Section II of Exhibit F attached hereto, and AIRLINE's total landed weight for the month. AIRLINE's total landed weight for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landing Weight of each type of AIRLINE's aircraft by the number of Revenue Landings of each said aircraft during such month.

7.02 Terminal Rents. The Terminal Rents, payable monthly, will be equal to the product of the Terminal Rental Rate for the period, calculated in accordance with 2.A., and Table F-1 therein, of Section II of Exhibit F, and the amount of AIRLINE's Exclusive Use Premises and Preferential Use Premises as set forth in Exhibit B. (For the purpose of this calculation, each gate position assigned for AIRLINE's preferential use will be deemed to constitute 2,821 square feet, representing a typical gate position's passenger holdroom area in the Terminal, unless and until the AUTHORITY determines, in its sole discretion, that a different area will be applied due to physical changes to the Terminal which increase or decrease said area, regardless of any actual variation.)

7.03 Baggage Handling System Fee (or BHS Fee). The Baggage Handling System Fee (or BHS Fee), payable monthly, will be calculated in accordance with item 2.C., and Table F-3 therein, of Section II of Exhibit F.

7.04 Joint Use Fee. The Joint Use Fee, payable monthly, will be calculated in accordance with the Joint Use Formula, and item 3, and Table F-4 therein, of Section II of Exhibit F.

7.05 Common Use Charges. AIRLINE shall pay monthly fees for each per-Turn use of gate positions, ticket counters, or Baggage Makeup Units, which are not leased to AIRLINE or assigned to AIRLINE for its preferential use, as follows:

(A) a Per Use Gate Fee, for each use of a gate position not assigned by this Agreement to AIRLINE for its preferential use, calculated in accordance with item 4.B., and Table F-5 therein, of Section II of Exhibit F.

(B) a Common Use Ticket Counter Fee, for each use of a ticket counter not leased to AIRLINE or assigned by this Agreement to AIRLINE for its preferential use, calculated in accordance with item 4.C., and Table F-6 therein, of Section II of Exhibit F.

(C) a Per Use Baggage Makeup Fee, for each use of a Baggage Makeup Area not leased to AIRLINE or assigned by this Agreement to AIRLINE for its preferential use, calculated in accordance with item 4.D., and Table F-7 therein, of Section II of Exhibit F.

Notwithstanding the foregoing, in the event AIRLINE has requested, in writing, one or more additional Gates to be assigned to AIRLINE for its preferential use under this Agreement, and AUTHORITY has not had sufficient Gates available (and not needed for common use) to fulfil AIRLINE's request, then AUTHORITY will, within one hundred twenty (120) days following the close of each Fiscal Year, reconcile the amount of Per Use Gate Fees accrued by AIRLINE subsequent to AIRLINE's request and during the remainder of such Fiscal Year, for each individual Common Use Gate used by AIRLINE, against the amount AIRLINE would have been required to pay AUTHORITY for such gate if the Gate had been assigned to AIRLINE for its preferential use, and if the actual Per Use Gate Fees accrued by AIRLINE for the use of any such Gate exceeded the amount AIRLINE would have been required to pay AUTHORITY if the Gate had been assigned to AIRLINE for its preferential use (using the recalculated rates as provided for in Section 8.05 below), then AUTHORITY shall refund the difference to AIRLINE within 30 days such that, after such reconciliation and payment, AIRLINE will not have paid more for the use of any individual Common Use Gate than it would have if the Gate had been available and assigned to AIRLINE for its preferential use as AIRLINE requested.

7.06 FIS Fee. The FIS Fee, payable monthly, will be calculated in accordance with item 4.A. of Section II of Exhibit F.

7.07 Employee Parking Lot Fee. The Employee Parking Lot fee will be equal to the number of AIRLINE's employees which have been granted access to the Airport's employee parking lot as of the first day of each calendar month, multiplied by the Airport's monthly employee parking lot fee effective as of such day. The employee parking lot fee will initially be \$15.00 per employee per month. AUTHORITY will notify AIRLINE in writing at least thirty (30) days in advance of any change in the employee parking lot fee.

7.08 Employee Badging Fee. The Employee Badging Fees will initially be:

- (a) \$60 for each badge application (whether for a new badge or a renewal);
- (b) \$100 for replacement of a lost or stolen badge;
- (c) \$150 for failure to return a badge upon termination of employment; and
- (d) \$25 per badging appointment made with the AUTHORITY's badging office, but missed by the employee.



AUTHORITY will notify AIRLINE in writing at least thirty (30) days in advance of any change in the employee badging fee.

7.09 Extraordinary Service Charges. Throughout the Term of the Agreement, AIRLINE shall pay extraordinary service charges, if applicable, as evidenced by extraordinary service charge authorizations executed by AIRLINE for such extraordinary additional equipment and services provided by AUTHORITY for AIRLINE's use. AIRLINE's charges for AUTHORITY purchased Terminal equipment shall be as set forth in a separate agreement with AUTHORITY.

7.10 Other Fees and Charges.

A. AUTHORITY expressly reserves the right to assess and collect the following:

(1) Reasonable and non-discriminatory fees for services provided by AIRLINE for any other Air Transportation Companies, or for AIRLINE by any other Air Transportation Companies, if such services or concessions would otherwise be available from a concessionaire, licensee, or permittee of AUTHORITY. However, if such other Air Transportation Company is a Designated Affiliate of AIRLINE, such fees for services shall not apply.

(2) Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by AUTHORITY or its contractors and utilized by AIRLINE, including, but not limited to, special maintenance of Airline Premises, equipment, vehicle storage and service areas, and remote ramp aircraft parking fee.

(3) Pro rata shares of any charges for the provision of any services or facilities which AUTHORITY is required or mandated to provide by any governmental entity (other than AUTHORITY acting within its proprietary capacity) having jurisdiction over the Airport.

B. AIRLINE shall pay all applicable sales, use, intangible and ad valorem taxes of any kind, assessed against Airline Premises, including the real property and any improvements thereto or leasehold estate created herein, or resulting from AIRLINE's occupancy or use of Airline Premises, whether levied against AIRLINE or AUTHORITY. AIRLINE shall also pay any other taxes or assessments against Airline Premises or leasehold estate created herein. AIRLINE may reserve the right to contest such taxes and withhold payment of such



taxes upon written notice to AUTHORITY of its intent to do so, so long as the nonpayment of such taxes does not result in a lien against the real property or any improvements thereon or a direct liability on the part of AUTHORITY. AUTHORITY agrees to immediately forward to AIRLINE any notices of such taxes and assessments due upon receipt of same.

C. Extraordinary Coverage. In the event AUTHORITY projects, for any Fiscal Year, that the amount of Revenues, less O&M Expenses, and less the O&M Reserve Requirement, will be less than one hundred twenty percent (125%) of that Fiscal Year's Debt Service, then the AUTHORITY may, in its sole discretion, increase the rents, fees, and charges payable under this agreement for the remainder of the Fiscal Year, by allocating to the Airfield Cost Center and Terminal Cost Center any additional amounts (referred to herein as "Extraordinary Coverage") which must be collected to eliminate such a deficit in the projected Revenues.

D. Additional Concourse E Protection. In addition to any Extraordinary Coverage charge imposed pursuant to paragraph C above, in the event AUTHORITY proceeds with a project to add a Concourse E to the Terminal, and projects that, as a result thereof, for any Fiscal Year, the amount of Revenues, less O&M Expenses, will be less than one hundred forty percent (140%) of that Fiscal Year's Debt Service, then the AUTHORITY may, in its sole discretion, increase the rents, fees, and charges payable under this Agreement for the remainder of the Fiscal Year, by allocating to the Terminal Cost Center any additional amounts which must be collected to eliminate such a deficit in the projected Revenues. For the purposes of this calculation, notwithstanding anything in this Agreement that may appear to the contrary, rental car facility charges ("CFCs") will not be included in Revenues (regardless of whether applied by the Authority to Debt Service, O&M Expenses, or anything else), and payments made from CFC funds on indebtedness arising from CFC-funded projects will not be included in Debt Service.

#### 7.11 Information to be Supplied by AIRLINE.

A. Not later than ten (10) days after the end of each month, AIRLINE shall file with AUTHORITY separate written reports, in the form shown in Exhibit E attached hereto (or such other form as the AUTHORITY may reasonably require), for activity conducted by AIRLINE during said month, and for activity conducted by for each other Air Transportation Company during said month which (i) was handled or otherwise accommodated by

AIRLINE and (ii) did not have an agreement in force with AUTHORITY providing for its own submission of activity data and direct payment of fees to AUTHORITY. Such activity reporting shall include, but not be limited, to the number of landings (by aircraft make and model), the number of revenue and non-revenue Enplaned Passengers, Deplaned Passengers, connecting passengers, through-passengers, and pounds of cargo, mail, and express shipments.

B. AUTHORITY shall have the right to rely on said activity reports in determining rents and charges due hereunder. AIRLINE shall have full responsibility for the accuracy of said reports. Payment deficiencies due to incomplete or inaccurate activity reports shall be subject to interest charges as set forth in Paragraph 7.12D.

C. AIRLINE shall at all times maintain and keep records reflecting the activity statistics of AIRLINE's activities at the Airport to be reported pursuant to Paragraph 7.11A. Such records shall be retained by AIRLINE for a period of three (3) years subsequent to the activities reported therein, or such other retention period as set forth in FAR Part 249, and upon prior written notice to AIRLINE shall be made available at Ft. Myers, Florida for audit and/or examination by AUTHORITY or its duly authorized representative during all normal business hours. AIRLINE shall produce such books and records at Ft. Myers, Florida within thirty (30) calendar days of AUTHORITY's notice to do so or pay all reasonable travel-related expenses, including but not limited to transportation, food, and lodging, necessary for an auditor selected by AUTHORITY to audit said books and records.

D. The cost of audit, with the exception of the aforementioned expenses, shall be borne by AUTHORITY; provided, however, the total cost of said audit shall be borne by AIRLINE if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than ten percent (10%) by category of rents, fees, and charges due on an annual basis hereunder, as determined by said audit;
- (2) AIRLINE has failed to maintain true and complete records in accordance with Paragraph 7.11C.



7.12 Payments.

A. Payments of one-twelfth (1/12) of the total annual rents for AIRLINE's Exclusive Use Premises and Preferential Use Premises shall be due in advance, without demand or invoice, on the first day of each month. Said rents and charges shall be deemed delinquent if payment is not received by the tenth (10) day of the month.

B. Payment of AIRLINE's Landing Fees shall be due fifteen (15) days from AUTHORITY's issuance of invoice, and shall be deemed delinquent if not received within ten (10) days of the due date.

C. Payment for all other fees and charges due hereunder, shall be due as of the due date stated on AUTHORITY's invoice. Said fees and charges shall be deemed delinquent if payment is not received within thirty (30) days of the stated date of such invoice.

D. AUTHORITY shall provide notice of any and all payment delinquencies, including payments of any deficiencies which may be due as a result of AUTHORITY's estimates of activity pursuant to Paragraph E below, or due to an audit performed pursuant to Paragraph 7.11C, herein; provided, however, interest at the rate of eighteen percent (18%) per annum shall accrue against any and all delinquent payment(s) from the due date until the date payments are received by AUTHORITY. This provision shall not preclude AUTHORITY from canceling this Agreement for default in the payment of rents, fees, or charges, as provided for in Section 12.01B herein, or from exercising any other rights contained herein or provided by law.

E. In the event AIRLINE fails to submit its monthly activity reports as required in Paragraph 7.11A, AUTHORITY shall estimate the rents, fees, and charges based upon the highest month of the previous twelve (12) month's activity reported by AIRLINE and issue an invoice to AIRLINE for same. If no activity data is available, AUTHORITY shall reasonably estimate such activity and invoice AIRLINE for same. AIRLINE shall be liable for any deficiencies in payments based on estimates made under this provision; payment for said deficiencies shall be deemed due as of the date such rental fee or charge was due and payable.



F. In the event AIRLINE's obligations with respect to Airline Premises or rights, licenses, or privileges granted hereunder shall commence or terminate on any date other than the first or last day of the month, AIRLINE's rents, fees, and charges shall be prorated on the basis of the number of days such premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

G. All payments due and payable hereunder shall be paid in lawful money of the United States of America, without set off, by check made payable to Lee County Port Authority and delivered to:

Via Wire Transfer

Bank of America  
13099 US 41 SE  
Fort Myers, FL 33907  
ABA #063100277  
Account Name: Lee County BOCC-Airport Revenue  
Account # 005500504580

Via U.S. Mail

Lee County Port Authority  
11000 Terminal Access Road Suite 8671  
Fort Myers, FL 33913-8213

7.13 Security for Performance.

A. Unless AIRLINE has provided regularly scheduled flights to and from the Airport during the eighteen (18) months prior to the Effective Date of this Agreement, as defined in Article 3, without the occurrence of any act or omission that would have been an event enumerated in Section 12.01 of this Agreement, AIRLINE shall provide AUTHORITY on the Effective Date of this Agreement, as defined in Article 3, with a contract bond, irrevocable letter of credit or other similar security acceptable to AUTHORITY ("Contract Security") in an amount equal to the estimate of three (3) months' rents, fees and charges payable by AIRLINE. AIRLINE shall be obligated to maintain such Contract Security in effect until the expiration of eighteen (18) consecutive months during which period AIRLINE commits no event enumerated in Section 12.01 of this Agreement. Such Contract Security shall be in a form and with a company reasonably acceptable to AUTHORITY and licensed to do business in the State of Florida. In the event that any such Contract Security shall be for a period less than the full period required by this Paragraph or if Contract Security shall be canceled, AIRLINE shall provide a renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation.

B. In the event AUTHORITY is required to draw down or collect against AIRLINE's Contract Security for any reason, AIRLINE shall, within ten (10) business days after AUTHORITY's written demand, take such action as may be necessary to replenish the existing Contract Security to its original amount (three months' estimated rents, fees, and charges) or to provide additional or supplemental Contract Security from another source so that the aggregate of all Contract Security is equal to three months' estimated rents, fees, and charges payable by AIRLINE pursuant to this Article 7.

C. Notwithstanding the above Paragraph 7.13A, AUTHORITY shall have the right in its sole discretion to waive such Contract Security requirements for a Signatory Airline which has not provided regularly scheduled flights at and from the Airport during the eighteen (18) months prior to the Effective Date of its Signatory Airline Agreement. Any such waiver by AUTHORITY shall be conditioned upon said Signatory Airline having provided regularly scheduled flights at six (6) other airports with activity levels and characteristics similar to the Airport during the most recent eighteen (18) month period, without committing any material default under the terms of the respective lease and use agreements at each of the six (6) facilities, and without a pattern of untimely payments for rents, fees and charges. The burden shall be on AIRLINE to demonstrate to AUTHORITY its compliance with these requirements at the six (6) other airports.

D. In addition to the foregoing, upon the occurrence of any AIRLINE act or omission that is an event enumerated in Section 12.01, or upon AIRLINE's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984 or any successor statute, as such may be amended, supplemented, or replaced, AUTHORITY, by written notice to AIRLINE given at any time within ninety (90) days of the date such event becomes known to AUTHORITY, may impose or reimpose the requirements of Paragraph 7.13A on AIRLINE. In such event, AIRLINE shall provide AUTHORITY with the required Contract Security within ten (10) days from its receipt of such written notice and shall thereafter maintain such Contract Security in effect until the expiration of a period of eighteen (18) consecutive months during which AIRLINE commits no additional event enumerated in Section 12.01 or the termination of bankruptcy proceedings, whichever is later.



E. If AIRLINE shall fail to obtain and/or keep in force such Contract Security required hereunder, such failure shall be grounds for immediate cancellation of this Agreement pursuant to Section 12.01. AUTHORITY'S rights under this Section 7.13 shall be in addition to all other rights and remedies provided to AUTHORITY under this Agreement.

F. AIRLINE and AUTHORITY agree that this Agreement constitutes an 'executory contract' for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 USC) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Furthermore, AIRLINE and AUTHORITY agree that any Contract Security provided by AIRLINE are not 'property of the estate' for purposes of Section 541 of the United States Bankruptcy Code (Title 11 USC), it being understood that any Contract Security is property of the third party providing it (subject to AUTHORITY's ability to draw against the Contract Security) and that all PFCs collected by AIRLINE with respect to Enplaned Passengers at the Airport, are property of AUTHORITY.

7.14 Affiliates. If and only if:

- (a) AIRLINE remains a Signatory Airline to this Agreement;
- (b) AIRLINE designates, in advance and in writing, to the AUTHORITY an Affiliate that will operate at the Airport; and
- (c) such designated Affiliate executes, and maintains in full force and effect, an airport use permit agreement with the Authority;

then, effective upon the date of such designation and financial guarantee (or such later date as specified by AIRLINE), such designated Affiliate will be considered a "Designated Affiliate" of Airline, and shall share the same rights as AIRLINE with respect to AIRLINE's Airline Premises without payment of any additional charges or premiums. AIRLINE hereby agrees to serve as financial guarantor for all rents, fees, charges, PFCs, and other amounts that are incurred or become due by any of AIRLINE's Designated Affiliates to the AUTHORITY. In the event AIRLINE provides AUTHORITY at least sixty (60) days advance written notice prior to the end of a specified calendar month that AIRLINE no longer desires the Designated Affiliate to be considered a Designated Affiliate, then, effective upon the end of the calendar month so specified in AIRLINE's notice, such Designated Affiliate will no longer be considered a Designated Affiliate of AIRLINE for purposes of this Agreement, and AIRLINE's guarantee of payment for such Affiliate will be ineffective as to any amounts incurred after the effective date of such termination of the Designated Affiliate status.



7.15 No Further Charges. Except as provided in this Agreement, or as may be permitted by any governmental entity (other than AUTHORITY, acting within its proprietary capacity) having jurisdiction over the Airport, no further rents, fees, or charges shall be charged against or collected from AIRLINE, its passengers, its shippers and receivers of freight, its suppliers of material, or its contractors or furnisher of services, by AUTHORITY, acting in its capacity as Airport proprietor, for the premises, facilities, rights, licenses, and privileges granted to AIRLINE herein.

## **ARTICLE 8: CHANGES IN RATES FOR RENTS, FEES, AND CHARGES**

8.01 Rates for Initial Fiscal Year. Rents, fees, and charges for the Fiscal Year ending September 30, 2024, shall be as established pursuant to the Prior Agreement.

8.02 Rates for Subsequent Fiscal Years.

A. No later than sixty (60) days prior to the beginning of the Fiscal Year beginning October 1, 2024, and each subsequent Fiscal Year during the term of this Agreement, AUTHORITY shall notify AIRLINE of the proposed (budgeted) schedule of rates for the rents, fees, and charges listed in items (1) through (4) of Article 7 above for such ensuing Fiscal Year. Said rates shall be determined and presented to AIRLINE substantially in conformance with the methods and format set forth in Exhibit F attached hereto. In determining such schedule, AUTHORITY will determine and use its own estimates for the applicable upcoming Fiscal Year, including but not limited to the estimates for Total Landed Weight, Enplaned Passengers, and International Deplaned Passengers.

B. The Signatory Airlines through its AAC shall have the right to review and comment upon the AUTHORITY's proposed operating and capital budget. No later than thirty (30) days after the forwarding of the proposed schedule of rates for rents, fees, and charges, AUTHORITY agrees to meet with the AAC at a mutually convenient time for the purpose of discussing such rents, fees, and charges. In advance of said meeting, AUTHORITY shall make available to the AAC any reasonably requested additional information relating to the determination of the proposed rates. AUTHORITY agrees to fully consider the comments and recommendations of the Signatory Airlines prior to finalizing its schedule of rates for rents, fees, and charges for the ensuing Fiscal Year.

C. Following said meeting, and prior to the end of the then current Fiscal Year, AUTHORITY shall notify AIRLINE of the rates for rents, fees, and charges to be established for the ensuing Fiscal Year.

D. If calculation of the new rates for rents, fees, and charges is not completed by AUTHORITY and the notice provided in Paragraph 8.02C is not given on or prior to the end of the then current Fiscal Year, the rates for rents, fees, and charges then in effect shall continue to be paid by AIRLINE until such calculations are concluded and such notice is

given. Upon the completion of such calculations and the giving of such notice, AUTHORITY shall determine the difference(s), if any, between the actual rents, fees, and charges paid by AIRLINE to date for the then current Fiscal Year and the rates for rents, fees, and charges that would have been paid by AIRLINE if said rates had been in effect beginning on the first day of the Fiscal Year. Said differences shall be applied to the particular rents, fees, or charges for which a difference(s) in rates resulted in an overpayment or underpayment, and shall be remitted by AIRLINE or credited or refunded by AUTHORITY in the month immediately following the calculation of the new Fiscal Year rates and the giving of written notice to AIRLINE by AUTHORITY.

8.03 Rate Changes During Fiscal Year. Rates for rents, fees, and charges may be changed at any other time that unaudited monthly AUTHORITY financial data indicates that total rents, fees, and charges payable pursuant to the then current rate schedules are reasonably estimated and anticipated by AUTHORITY to increase or decrease by more than ten percent (10%) from the total rents, fees, and charges that would be payable based upon the use of the monthly financial data then available for said Fiscal Year. Rates for rents, fees, and charges may also be changed whenever required by the terms and provisions of the Bond Resolution; provided, however, that Signatory Airlines' total rents, fees, and charges payable to AUTHORITY shall be allocated to AIRLINE in accordance with this Agreement.

8.04 Incorporation of Exhibit F. Adjustments to rates for rents, fees, and charges shall be determined in accordance with Exhibit F and transmitted to AIRLINE without the necessity of formal amendment of this Agreement.

8.05 Annual Reconciliation and Settlement of Airline Rents, Fees, and Charges for the Fiscal Year. AUTHORITY shall use its best efforts to recalculate the rents, fees, and charges set forth in Exhibit F, according to the methods set forth therein, within one hundred twenty (120) days following the close of each Fiscal Year, or as soon as unaudited financial data for said Fiscal Year is available, based on actual results for the Fiscal Year. AIRLINE shall have reasonable access to the records of AUTHORITY, and shall have the right to audit the financial data used in connection with such recalculation. Upon the determination of any difference(s) between the actual rents, fees, and charges paid by Signatory Airlines during the preceding Fiscal Year and the rents, fees, and charges that would have been paid by Signatory Airlines using said recalculated rates, AUTHORITY shall, in the event of overpayment, promptly refund to AIRLINE the amount of such overpayment within 30 days, and in the event of underpayment, invoice AIRLINE for the amount of such



underpayment. Said invoiced amount shall be due within thirty (30) days of the invoice mailing date.

8.06 Use of Airport Fund. AUTHORITY may use the amounts remaining in the Airport Fund at the end of each Fiscal Year after determination of Revenue Sharing as described in Section 8.07, if available, for the following purposes and in the order of priority as determined by AUTHORITY: (i) for AUTHORITY to satisfy its obligations under the determination of any Settlement pursuant to Section 8.05; (ii) for improvements on, additions to, and acquisitions for the Airport System; (iii) for Debt Service on Bonds; (iv) for the purchase and retirement of Bonds; and (v) for any lawful Airport System purpose.

8.07 Revenue Sharing. At the end of each Fiscal Year, after the reconciliation and settlement set forth in Section 8.05, AUTHORITY will share with the passenger Signatory Airlines a portion of the Net Funds to be Shared, if any, calculated in accordance with Section III of Exhibit F. Availability of revenue sharing will be based on AUTHORITY's ability to satisfy its obligations and meet all Bond Resolution requirements in each Fiscal Year.

8.08 AUTHORITY Covenants.

A. AUTHORITY covenants that for purposes of assigning and allocating costs, it shall utilize generally accepted accounting practices utilized for airports operating as an enterprise fund, and include only those charges properly attributable to the Airport.

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

C. AUTHORITY shall use Revenues of the Airport System in accordance with the provisions of the Bond Resolution and applicable law.

D. AUTHORITY, to the extent authorized by the laws governing AUTHORITY along with all applicable tax laws, will use its best efforts to use tax-exempt sources for financing the Airport System.

E. All rates and charges shall be at reasonable and non-discriminatory rates based on AUTHORITY's cost of the facility or service provided to and used by AIRLINE.

F. Indirect and general administrative costs shall be allocated in a reasonable, transparent cost allocation formula calculated consistently for all Cost Centers of the AUTHORITY.

G. AUTHORITY will use its best efforts to obtain all available grants-in-aid (state or federal) for the financing of the Airport.

## **ARTICLE 9: ALTERATIONS AND IMPROVEMENTS BY AIRLINE**

### **9.01 Alterations and Improvements by AIRLINE.**

A. In accordance with Paragraph 5.01M, AIRLINE may construct and install, at AIRLINE's sole expense, such improvements in its Exclusive Use Premises as AIRLINE deems to be necessary for its operations; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by the Executive Director in writing prior to the commencement of any and all such construction or installation and that AIRLINE complies with the requirements of AUTHORITY's Leasehold Development Standards. Said approval shall not be unreasonably withheld, conditioned or delayed. Provided further, that no reduction or abatement of rents, fees, and charges shall be allowed for any interference with AIRLINE's operations by such construction.

B. Prior to the commencement of any improvements greater than \$200,000, AUTHORITY shall require that AIRLINE obtain, or cause to be obtained, payment and performance bonds or other security that meets the requirements of Section 255.05, Florida Statutes in a sum equal to the full amount of the construction contract awarded by AIRLINE for the improvements. Said bond shall name AUTHORITY as an obligee hereunder and shall be drawn in a form and from such company acceptable to AUTHORITY and licensed to do business in the State of Florida; shall guarantee the faithful performance of necessary construction and completion of improvements and payment of all persons who furnish labor, services, or materials for the prosecution of the work; in accordance with approved final plans and detailed specifications; and shall protect AUTHORITY against any losses and liability, damages, expenses, claims, and judgments caused by or resulting from any failure to perform completely the work described. The payment bond shall be provided in the sum equal to the full amount of the construction contract awarded by AIRLINE for the improvements. Said bond shall name AUTHORITY as an obligee thereunder and shall guarantee payment of all wages for labor and services engaged, and of all bills for materials, supplies, and equipment used in the performance of said construction contract. Any work associated with such construction or installation shall not unreasonably interfere with the operation of the Airport, or otherwise unreasonably interfere with the permitted activities of other Terminal tenants and users. Upon completion of approved construction and within sixty (60) days of AIRLINE's receipt of a certificate of occupancy, a complete set of as-built drawings shall be delivered to the Executive Director in a media type and format acceptable



for the permanent record of AUTHORITY.

C. AIRLINE shall furnish or require contractors to furnish satisfactory evidence of statutory worker's compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance, on a builder's risk form with the interest of AUTHORITY endorsed thereon, in such amounts and in such manner as AUTHORITY may reasonably require. AUTHORITY may require additional insurance for any alterations or improvements approved hereunder, in such limits as AUTHORITY reasonably determines to be necessary.

D. Any construction or installation made by AIRLINE shall be at the sole risk of AIRLINE and shall be in accordance with the Leasehold Development Standards and all applicable state and local codes and laws and subject to inspection by the Executive Director.

E. All improvements made to Airline Premises and additions and alterations thereto made by AIRLINE, except those financed by AUTHORITY, shall be and remain the property of AIRLINE until expiration of the Term of this Agreement. Upon termination or cancellation of this Agreement, said additions and alterations shall become the property of AUTHORITY or at AUTHORITY's option removed by AIRLINE; provided, however, that any trade fixtures, signs, equipment and other movable personal property of AIRLINE not permanently affixed to Airline Premises shall remain the property of AIRLINE, subject to the terms of Article 14.

## **ARTICLE 10: DAMAGE OR DESTRUCTION**

10.01 Partial Damage. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render Airline Premises untenable as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as hereinafter provided. No abatement of rents shall accrue to AIRLINE so long as Airline Premises remain tenantable.

10.02 Substantial Damage. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be so extensively damaged by fire or other casualty as to render any portion of said Airline Premises untenable but capable of being repaired, as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as hereinafter provided. If such repairs have not been commenced by AUTHORITY within 90 days of such damage, AIRLINE shall have the option to terminate its agreement related to those facilities so damaged. In such case, the rents payable hereunder with respect to AIRLINE's affected Airline Premises shall be paid up to the time of such damage and shall thereafter be abated equitably in proportion as the part of the area rendered untenable bears to total Airline Premises until such time as such affected Airline Premises shall be restored adequately for AIRLINE's use. AUTHORITY shall use its best efforts to provide AIRLINE with alternate facilities acceptable to AIRLINE to continue its operation while repairs are being completed, at a rental rate not to exceed that provided for in this Agreement for comparable space.

### 10.03 Destruction.

A. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Airline Premises not economically feasible to repair, as reasonably determined by AUTHORITY, AUTHORITY shall notify AIRLINE within a period of forty-five (45) days after the date of such damage of its decision whether to reconstruct or replace said space; provided, however, AUTHORITY shall be under no obligation to replace or reconstruct such premises. The rents payable hereunder with respect to affected Airline Premises shall be paid up to the time of such damage and thereafter shall abate until such time as replacement or reconstructed space becomes available for use by AIRLINE.



B. In the event AUTHORITY elects to reconstruct or replace affected Airline Premises, AUTHORITY shall use its best efforts to provide AIRLINE with alternate facilities reasonably acceptable to AIRLINE to continue its operation while reconstruction or replacement is being completed at a rental rate not to exceed that provided for in this Agreement for comparable space.

C. In the event AUTHORITY elects to not reconstruct or replace the affected Airline Premises, the affected space shall be removed from the Airline Premises effective as of the date of such damage, and AUTHORITY shall meet and consult with AIRLINE on ways and means to permanently provide AIRLINE with adequate replacement space for the affected Airline Premises. If the parties agree to such replacement space, they will amend this Agreement to reflect any such related additions and deletions to Airline Premises.

10.04 Damage Caused By AIRLINE. Notwithstanding the provisions of this Article 10, 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 AUTHORITY by reason of such damage or destruction, AIRLINE shall pay the amount of such additional costs to AUTHORITY.

10.05 AUTHORITY's Responsibilities. AUTHORITY shall maintain adequate, reasonable and customary levels of insurance with no less restrictive coverage than that provided by standard extended coverage endorsements on the "all risk" form, for the full replacement costs thereof as determined from time to time by the AUTHORITY; provided, however, that AUTHORITY's obligations to repair, reconstruct, or replace affected premises under the provisions of this Article 10 shall in any event be limited to restoring affected Airline Premises to substantially the same condition that existed at the date of damage or destruction, including any subsequent improvements made by AUTHORITY, and shall further be limited to the extent of insurance proceeds and other funds available to AUTHORITY for such repair, reconstruction, or replacement; provided further that AUTHORITY shall in no way be responsible for the restoration or replacement of any equipment, furnishings, property, real improvements, signs, or other items installed and/or owned by AIRLINE in accordance with this Agreement, unless such damage is caused by negligence or willful act or omission of AUTHORITY, its officials, agents, or employees acting within the course or scope of their employment.



## **ARTICLE 11: INDEMNIFICATION AND INSURANCE**

11.01 Indemnification. Except where, and to the extent, caused by the negligence or misconduct of the AUTHORITY or the agents, employees, contractors, officers or board of the AUTHORITY, or arising from the AUTHORITY's breach of its obligations or representations under this Agreement, AIRLINE agrees to release, defend, indemnify and hold harmless AUTHORITY and Lee County, Florida and their respective agents, employees, board members and elected officers and each of them, from and against any and all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney's fees) and causes of action of every kind and character, against AUTHORITY by reason of any damage to property (or the environment, including any contamination of Airport property by AIRLINE or its agents, employees or contractors, such as the soil or storm water by fuel, gas, chemicals or other substances deemed by the Environmental Protection Agency (EPA) to be environmental contaminants at the time this Agreement is executed or as may be redefined by the appropriate regulatory agencies in the future), or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever, or any governmental agency, arising out of AIRLINE's performance under this Agreement, AIRLINE's use or occupancy of the Airline Premises, AIRLINE's negligent acts, omissions or operations at the Airport, or any material breach of the terms of this Agreement by AIRLINE.

Upon the filing by anyone of a claim with the AUTHORITY for damages arising out of incidents for which AIRLINE herein agrees to indemnify and hold harmless the AUTHORITY, the AUTHORITY shall promptly notify AIRLINE of such claim and, in the event that AIRLINE does not settle or compromise such claim, then AIRLINE shall undertake the legal defense of such claim both on behalf of AIRLINE and on behalf of the AUTHORITY. It is specifically agreed, however, that the AUTHORITY, at its option and at its own expense, may participate in the legal defense of such a claim. Any final judgment rendered against the AUTHORITY for any cause for which AIRLINE is liable hereunder shall be conclusive against AIRLINE as to liability and amount upon the expiration of the time for appeal therefrom. Any provisions in the Agreement which purport to limit, waive or release the AUTHORITY for its negligence or misconduct (or the negligence or misconduct of the AUTHORITY's agents, employees, contractors, officers or board) shall be of no effect. This Article 11 shall survive the termination of this Agreement as to claims arising during the Term thereof. Compliance with the insurance requirements of this Article 11 shall not relieve AIRLINE of its liability or obligation to indemnify AUTHORITY as set forth in this Article 11.

11.02 Insurance.

A. During the Term of this Agreement, AIRLINE shall provide, pay for and maintain, the types of insurance coverage described herein. All insurance shall be issued by responsible insurance companies eligible to do business or pay claims in the State of Florida.

B. All liability policies shall provide that AUTHORITY is an Additional Insured to the extent of AIRLINE's contractual obligations hereunder. The insurance coverage and limits required shall be evidenced by properly executed certificates of insurance. These certificates shall be signed by the authorized representative of the insurance company shown on the certificate.

C. If at any time, but not more than once every twelve (12) months from any individual insurance company, AUTHORITY requests a written statement from the insurance company as to any impairments to the aggregate limit, AIRLINE shall promptly authorize and have delivered such statement to AUTHORITY. AIRLINE authorizes AUTHORITY to confirm with AIRLINE's insurance agents, brokers and insurance companies all information furnished AUTHORITY, as to its compliance with its insurance requirements. Renewal Certificates of Insurance must be provided to AUTHORITY prior to expiration of current coverages. AIRLINE will provide the certificates of insurance to the AUTHORITY via email to: riskmanagement@flylcpa.com.

D. All required insurance coverages of AIRLINE shall be primary to any insurance or self-insurance program of AUTHORITY. AIRLINE waives, and shall cause its insurers to waive, their respective rights of subrogation against AUTHORITY for recovery of damages to the extent these damages are covered by AIRLINE's Airport Liability, Aircraft Liability, Automobile Liability, and Workers' Compensation policies, as well as any umbrella or excess policy coverage.

E. All required insurance coverages of AIRLINE shall be placed with insurers duly licensed and authorized to do business in the State of Florida and with an AM Best rating of not less than A-VII or other rating agency equivalent. The AUTHORITY in no way warrants that the above required minimum insurer rating is sufficient to protect the AIRLINE from potential insurer solvency.



F. The acceptance of delivery to AUTHORITY of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or acceptance by AUTHORITY that the insurance requirements in this Agreement have been met.

G. No operations shall either commence or continue at the Airport unless and until the required certificates of insurance are delivered to AUTHORITY.

H. The insurance coverages and limits required of AIRLINE under this Agreement are designed to meet the minimum requirements of AUTHORITY. They are not designed as a recommended insurance program for AIRLINE. AIRLINE is responsible for insuring its real and personal property located at the Airport. AIRLINE, alone, shall be responsible for the sufficiency of its own insurance program. Should AIRLINE have any question concerning its exposures to loss under this Agreement, or the possible insurance coverages needed therefor, it should seek professional advice.

I. AIRLINE and AUTHORITY understand and agree that the limits of the insurance herein required may from time to time become inadequate, and AIRLINE agrees that it will increase such limits upon receipt of written request, which shall be based upon AIRLINE's reasonable determination that such increase is warranted to satisfy the coverage requirements intended as of the date hereof. AIRLINE shall furnish AUTHORITY, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force.

J. AIRLINE or AIRLINE's insurance companies or their authorized representative shall give AUTHORITY thirty (30) days prior written notice by registered or certificated mail of any cancellation, intent not to renew, or material reduction in any policy's coverage, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, it is agreed that immediate steps will be taken to have it reinstated. Said notices shall be sent pursuant to Section 18.22 of this Agreement.

K. Should at any time AIRLINE not provide or maintain the insurance coverages required in this Agreement, AIRLINE must discontinue operations at the Airport, and AUTHORITY may terminate or suspend this Agreement, in accordance with Article 12.01 B(3).

L. The amounts and types of insurance shall conform to the following minimum requirements with policies, forms and endorsements that are comparable to Insurance Service Office (ISO) requirements.



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

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

(2) Airport Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement. Coverage shall include, but not be limited to bodily injury liability, property damage liability, passenger legal liability, contractual liability, personal injury liability, products and completed operations liability, passengers' checked and unchecked baggage liability, hangarkeepers' liability, grounding liability, premises liability, cargo legal liability, fire legal liability, automobile liability, liquor liability, and liability arising out of the use by the AIRLINE of any automobile or mobile equipment operated by the AIRLINE while on restricted airport premises (areas of aircraft operations). The limits of coverage shall not be less than:

Airlines Operating Aircraft with fifty (50) or more seats:

Bodily & Personal Injury	\$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

Airlines Operating Aircraft with less than fifty (50) seats:

Bodily & Personal Injury	\$50,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

(3) Aircraft Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement for all owned, non-owned, leased or hired aircraft, including passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury & Property Damage Liability	\$200,000,000 Combined Single Limit Each Occurrence & Aggregate
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(4) Business Automobile Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury & Property Damage Liability	\$5,000,000 Combined Single Limit Each Occurrence & Aggregate
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(5) Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability required for the Airport Liability Policy, Aircraft Liability and the Business Automobile Policy.

(6) Option to Self-insure. Notwithstanding anything to the contrary in this Article, if and so long as AIRLINE maintains a book value of at least \$200 million as calculated under generally accepted accounting principles, AIRLINE may elect to provide the insurance coverage required herein through a self-insurance program established by AIRLINE in lieu of purchasing such insurance.

## **ARTICLE 12: CANCELLATION BY AUTHORITY**

12.01 Events of Default. The events described below shall be deemed events of default by AIRLINE hereunder:

A. Upon the occurrence of the following event of default, AUTHORITY shall immediately give written notice of default.

(1) The conduct of any business or performance of any acts at the Airport not specifically authorized herein or by other agreements between AUTHORITY and AIRLINE, and said business or acts do not cease within thirty (30) days of receipt of AUTHORITY's written notice to cease said business or acts.

B. Upon the occurrence of any one of the following events of default, AUTHORITY shall immediately give written notice of default. Upon receiving notice of any default listed in this Paragraph 12.01B, AIRLINE shall cure the default within thirty (30) days of receiving the notice.

(1) The failure by AIRLINE to pay any part of the rents, fees, and charges due hereunder and the continued failure to pay said amounts in full within thirty (30) days of AUTHORITY's written notice of payments past due. Provided, however, if a dispute arises between AUTHORITY and AIRLINE with respect to any obligation or alleged obligation of AIRLINE to make payments to AUTHORITY, payments under protest by AIRLINE of the amount due shall not waive any of AIRLINE'S rights to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then AUTHORITY shall promptly reimburse AIRLINE any amount determined as not due plus interest on such amount at one and one-half percent (1-1/2%) per month.

(2) The failure by AIRLINE to provide and keep in force Contract Security in accordance with Section 7.13.

(3) The failure by AIRLINE to maintain and keep in force insurance coverage in accordance with this Agreement. Notwithstanding any other provisions of this



Paragraph 12.01B, AIRLINE must immediately discontinue operations at the Airport in accordance with Paragraphs 11.02G and 11.02K until such time as insurance coverage is in force.

C. Upon the occurrence of any one of the following events of default, AUTHORITY may give written notice of default. Upon receiving notice of any default listed in this Paragraph 12.01C, AIRLINE shall: (1) cure the default within thirty (30) days of receiving the notice; or (2) if by reason of the nature of such default, the same cannot be remedied within thirty (30) days, AIRLINE shall commence the remedying of such default within said thirty (30) days following such written notice, and having so commenced, continue with diligence the curing thereof until the default is remedied. AIRLINE shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, and (ii) that it is proceeding with diligence to cure said default, and that such default will be cured within a reasonable period of time.

(1) The failure by AIRLINE to remit PFCs in accordance with Section 18.03.

(2) The appointment of a trustee, custodian, or receiver of all or a substantial portion of AIRLINE's assets.

(3) The divestiture of AIRLINE's estate herein by operation of law, by dissolution, or by liquidation (not including a merger or sale of assets).

(4) The insolvency of AIRLINE; or if AIRLINE shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors.

(5) The abandonment by AIRLINE of the Airline Premises, or its conduct of business at the Airport; and, in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a labor dispute or other governmental action in which AIRLINE is directly involved (provided, however, AIRLINE's requirement to cure a default of this paragraph (5) shall be subject to the provisions of section 18.25 of this Agreement).

(6) Failure by AIRLINE to make under-utilized PFC-funded Airline Premises available for use by other Air Transportation Companies in accordance with Section 16.02 of this Agreement.

12.02 Continuing Responsibilities of AIRLINE. Notwithstanding the occurrence of any event of default, AIRLINE shall remain liable to AUTHORITY for all rents, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless AUTHORITY elects to cancel this Agreement, AIRLINE shall remain liable for and promptly pay all rents, fees, and charges accruing hereunder until termination of this Agreement as set forth in Article 3 or until this Agreement is canceled by AIRLINE pursuant to Article 13.

12.03 AUTHORITY's Remedies. Upon the occurrence of any event enumerated in Paragraphs 12.01A, 12.01B, of 12.01C, including applicable notice and cure periods, the following remedies shall be available to AUTHORITY:

A. AUTHORITY may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified.

B. AUTHORITY may cancel this Agreement, effective upon the date specified in the notice of cancellation. Upon such date, AIRLINE shall be deemed to have no further rights hereunder and AUTHORITY shall have the right to take immediate possession of AIRLINE's Airline Premises.

C. AUTHORITY may reenter the Airline Premises and may remove all AIRLINE personal property from same upon the date of reentry specified in AUTHORITY's written notice of reentry to AIRLINE. For the event enumerated in Paragraph 12.01A, reentry shall be not less than fifteen (15) days from the date of notice of reentry. Upon any removal of AIRLINE property by AUTHORITY hereunder, AIRLINE property may be stored at a public warehouse or elsewhere at AIRLINE's sole cost and expense.

D. AUTHORITY may relet Airline Premises and any improvements thereon or any part thereof at such rents, fees, and charges and upon such other terms and conditions as AUTHORITY, in its sole discretion, may deem advisable, with the right to make alterations, repairs of improvements on said Airline Premises. In reletting the Airline Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms comparable than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's event of default.



E. In the event that AUTHORITY relets Airline Premises, rents, fees, and charges received by AUTHORITY from such reelecting shall be applied: (i) to the payment of any indebtedness other than rents, fees, and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rents, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rents, fees, and charges as the same may become due and payable hereunder. If that portion of such rents, fees, and charges received from such reletting and applied to the payment of rents, fees, and charges hereunder is less than the rents, fees, and charges as would have been payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any reasonable costs and expenses incurred by AUTHORITY in such reletting not covered by the rents, fees, and charges received from such reletting.

F. No reentry or reletting of Airline Premises by AUTHORITY shall be construed as an election on AUTHORITY'S part to cancel this Agreement unless a written notice of cancellation is given to AIRLINE.

G. AIRLINE shall pay to AUTHORITY all other costs, incurred by AUTHORITY in the exercise of any remedy in this Article 12, including, but not limited to, reasonable attorney fees, disbursements, court costs, and expert fees.

12.04 Remedies Under Federal Bankruptcy Laws. Notwithstanding the foregoing, upon the filing by or against AIRLINE of any proceeding under Federal bankruptcy laws, if AIRLINE has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, AUTHORITY shall have the right to cancel this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, as such may be subsequently amended, supplemented, or replaced. Such cancellation shall be by written notice to AIRLINE within sixty (60) days from the date of AIRLINE's initial filing in bankruptcy court.



## **ARTICLE 13: CANCELLATION BY AIRLINE**

13.01 Events of Default. The events described below shall be deemed events of default by AUTHORITY hereunder:

A. AUTHORITY fails to keep, perform, or observe any material term, covenant, or condition herein contained, to be kept, performed, or observed by AUTHORITY and such failure continues for sixty (60) days after receipt of written notice from AIRLINE; or, if by its nature such default cannot be cured within such sixty (60) day period, AUTHORITY shall not commence to cure or remove such default within said sixty (60) days and to cure or remove the same as promptly as reasonably practicable; provided, however, AUTHORITY's performance under this Paragraph shall be subject to the provisions of Section 18.25 of this Agreement.

B. Airport is closed to flights in general or to the flights of AIRLINE, for reasons other than those circumstances within AIRLINE's control, and Airport fails to be reopened to such flights within sixty (60) consecutive days from such closure.

C. The Airport is permanently closed as an air carrier airport by act of any federal, state, or local government agency having competent jurisdiction; or AIRLINE is unable to use Airport for a period of at least sixty (60) consecutive days due to any law or any order, rule or regulation of any governmental authority having jurisdiction over the operations of the Airport; or any court of competent jurisdiction issues an injunction preventing AUTHORITY or AIRLINE from using Airport for airport purposes, for reasons other than those circumstances within AIRLINE's control, and such injunction remains in force for a period of at least sixty (60) consecutive days.

D. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control, or use of the Airport in such a manner as to substantially restrict AIRLINE from conducting its operations, if such restriction be continued for a period of sixty (60) consecutive days or more.

13.02 AIRLINE's Remedy. So long as AIRLINE is not in default as set forth in Section 12.01 of this Agreement, including but not limited to payments due to AUTHORITY hereunder, AIRLINE may cancel this Agreement upon the occurrence of an event of default, as set forth in

Section 13.01 and AUTHORITY's failure to cure or remove the same within the time periods set forth in that section. In such event, AIRLINE shall serve fifteen (15) days' advance written notice of cancellation to AUTHORITY. All rents, fees, and charges payable by AIRLINE shall cease as of the date of such cancellation and AIRLINE shall surrender the Airline Premises in accordance with Article 14 hereof.

## **ARTICLE 14: SURRENDER OF AIRLINE PREMISES**

14.01 Surrender and Delivery. Upon termination or cancellation of this Agreement, AIRLINE shall promptly and peaceably surrender to AUTHORITY its Airline Premises and all improvements thereon to which AUTHORITY is entitled in good and fit condition, reasonable wear and tear as well as damage or repair which is the responsibility of AUTHORITY hereunder excepted; provided, however, nothing in this Section 14.01 shall be construed to modify the obligations of the parties set forth in Article 9, Article 10, and Article 11.

### 14.02 Removal of Property.

A. Unless AIRLINE is in default for payment of rents, fees, and charges hereunder, AIRLINE shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft (which AIRLINE may remove regardless of any default status), tools, equipment, trade fixtures, and other personal property, title to which shall remain in AIRLINE, unless otherwise set forth in this Agreement, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) business days following termination of this Agreement, whether by expiration of time or otherwise, as provided herein. AIRLINE shall not abandon any portion of its property at the Airport without the written consent of AUTHORITY.

B. Any and all property not removed by AIRLINE within thirty (30) business days following the date of termination of this Agreement and left on the Airport without the consent of the AUTHORITY shall, at the option of AUTHORITY, (i) become the property of AUTHORITY at no cost to AUTHORITY; (ii) be stored by AUTHORITY, at no cost to AUTHORITY and released to AIRLINE upon payment of any outstanding unpaid rents, fees, or charges owed by AIRLINE; or (iii) sixty (60) days after the termination date be sold at public or private sale at no cost to AUTHORITY with the proceeds of any sale to be retained by AUTHORITY. Except as may be agreed to otherwise by AUTHORITY and AIRLINE, all AUTHORITY property damaged by or as a result of the removal of AIRLINE's property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.



## **ARTICLE 15: ASSIGNMENT, SUBLETTING, AND HANDLING AGREEMENTS**

### **15.01 Assignment and Subletting by AIRLINE.**

A. In the event that AIRLINE shall, directly or indirectly, assign, sell, hypothecate, or otherwise transfer this Agreement, or any portion of Airline Premises, without the prior written consent of AUTHORITY, AUTHORITY, in its sole discretion may terminate this Agreement upon thirty (30) days' written notice; provided, however, AIRLINE may assign: (i) this Agreement to any person, firm or corporation with which AIRLINE may merge or consolidate or which may succeed to the business of AIRLINE, without such consent; or (ii) all or a part of its rights, privileges and obligations hereunder to another air carrier but only subject to the mutual approval of AIRLINE and AUTHORITY after cooperative efforts to find such an assignee and provided that such assignment shall not result in compensation to AIRLINE for the rights, privileges and obligations hereunder so assigned.

B. AIRLINE shall not sublease Airline Premises, other than to a Designated Affiliate, without the prior written consent of AUTHORITY, which consent may be withheld if AUTHORITY has substantially similar space available, but unleased, or if AUTHORITY can make such space available for lease within a reasonable time, and, failing in this, such prior consent shall not be unreasonably withheld. Use of AIRLINE's Exclusive Use Premises or any part thereof, by anyone other than AIRLINE or its Designated Affiliate shall be deemed a sublease.

C. AIRLINE shall include with its request for permission to assign or sublease, a copy of the proposed assignment or sublease agreement. The assignment or sublease agreement submitted with AIRLINE's request shall include the following information: (i) the term; (ii) the area or space to be assigned or subleased; (iii) the sublease rents to be charged; and (iv) the provision that assignee or sublessee must execute a separate agreement with AUTHORITY for operating at the Airport. Any other information reasonably requested by AUTHORITY pertaining to said sublease or assignment shall be promptly provided by AIRLINE. A fully executed copy of such sublease or assignment shall be submitted to AUTHORITY for final approval (if such consent thereto is required herein) within sixty (60) days of the occupancy of Airline Premises, or any portion thereof, by the assignee or sublessee.

D. Nothing in this Article 15 shall be construed to release AIRLINE from its obligations under this Agreement, including but not limited to, the payment of rents, fees, and charges provided herein.

15.02 Handling Agreements. In the event AIRLINE agrees to ground handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the foregoing, AIRLINE shall not ground handle any Air Transportation Company which does not have consent of AUTHORITY for the operation of its Air Transportation Business at the Airport, and a handling agreement between AIRLINE and the Air Transportation Company.

## **ARTICLE 16: AVAILABILITY OF ADEQUATE FACILITIES**

16.01 Declaration of Intent. The parties acknowledge the objective of AUTHORITY to offer access to the Airport, including the provision of adequate gate positions and space in the Terminal, to all Air Transportation Companies desiring to serve Airport. Recognizing that physical and financial limitations may preclude timely expansion of the Terminal and Terminal Aircraft Apron areas to meet the stated requests of AIRLINE and/or such other Air Transportation Companies ("Requesting Airlines") for additional facilities, AUTHORITY hereby states its intent to pursue the objective of achieving an optimum balance in the overall utilization of the Terminal and Terminal Aircraft Apron areas to be achieved, if necessary, through sharing, from time to time, of gate positions and space and other passenger handling facilities.

### 16.02 Accommodation of others on AIRLINE's Preferential Use Premises.

A. AIRLINE shall have the first priority of use of its Preferential Use Premises for its (and its Designated Affiliates) own scheduled aircraft operations, during the Period of Use for each such flight. The AUTHORITY reserves the right to permit and schedule the use of this space on a secondary priority basis to other Air Transportation Companies. AUTHORITY also reserves the right to require the removal of AIRLINE's personnel, equipment and aircraft from Preferential Use Premises at any time that is more than one hour before the scheduled arrival or one hour after the scheduled departure of AIRLINE's or its Designated Affiliates' aircraft, provided that the AUTHORITY shall provide a space on the Airport to park such aircraft. Notwithstanding AIRLINE's first priority as set forth above, AIRLINE shall cooperate with AUTHORITY, to the extent practicable, to accommodate other Air Transportation Companies from time to time, as deemed necessary by AUTHORITY, for situations including, but not limited to, unscheduled flights (including charters, diversions due to weather, and other circumstances not otherwise foreseen and accommodated).

B. AUTHORITY shall use its best efforts to accommodate flights of other Air Transportation Companies on gate positions other than AIRLINE'S Preferential Use gate positions occupied by overnight parking of AIRLINE'S or its Designated Affiliates' aircraft, and to the extent that is not possible, will require any Air Transportation Company assigned to use AIRLINE's Preferential Use gate position to vacate that gate position by the earlier of sixty (60) minutes prior to AIRLINE's or its Designated Affiliates' next scheduled flight departure, or thirty (30) minutes prior to AIRLINE's or its Designated Affiliates' next scheduled arrival, at such gate position.



C. For any time period during which AIRLINE's Preferential Use Premises is assigned for use or in use by another Air Transportation Company pursuant to this Article 16, AIRLINE shall be relieved of its obligation under this Agreement to indemnify and save harmless AUTHORITY, its officers, directors, employees, or agents with regard to any claim for property damage or personal injury arising out of or in connection with said accommodated Air Transportation Company's use of its Preferential Use Premises, except to the extent such damage or injury is caused by AIRLINE, its officers, directors, employees or agents.

16.03 Recapture of Preferential Use Gate Positions. AUTHORITY reserves the right to Recapture (and thereby remove AIRLINE'S preferential rights to use), one or more of AIRLINE's preferentially assigned gates, and reassign such gate(s) for either common use, or preferential use by another Signatory Airline, if, at any time:

- (1) AIRLINE has not, across all of its preferential gates combined, maintained the Minimum Average Gate Utilization over the preceding twelve (12) full calendar months; and
- (2) AUTHORITY determines that there is a reasonable need for the use of such gate(s) by one or more other Air Transportation Companies.

Prior to such Recapture becoming effective, AUTHORITY will provide AIRLINE at least 120 days' advance written notice (a "Recapture Notice"), specifying the gate or gates it intends to recapture. AIRLINE will have thirty (30) days after the Recapture Notice to provide AUTHORITY with a plan (a "Cure Plan") to schedule and operate, prior to the effective date of the Recapture specified in the Recapture Notice, sufficient flights to meet the Minimum Average Gate Utilization on each of AIRLINE's preferential gates (including the gate(s) specified in the Recapture Notice). In the event AIRLINE fails to meet the Minimum Average Gate Utilization on each of AIRLINE'S preferential gates (including the gate(s) specified in the Recapture Notice) if any calendar month during the one-year period following the date of the Recapture Notice, AUTHORITY will have the right to recapture up to the number of gates specified in the Recapture Notice (which number of recaptured gates shall be no more than the number required to ensure AIRLINE meets the Minimum Average Gate Utilization with respect to its remaining gates), with AIRLINE having no further opportunity to cure its deficiency.

When determining specific preferential use gates to be Recaptured, to the extent feasible AUTHORITY will not specify gates that will leave AIRLINE's remaining preferential use gate positions non-adjacent.

Upon the effective date of any such Recapture, AIRLINE's obligation to pay for such gate as a preferential use gate will cease, and AIRLINE shall instead pay common use per turn fees for any of its flights on such gate.

16.04. AUTHORITY's Right to move AIRLINE to alternate Premises. In order to optimize passenger flow, use of the facility, and minimize future capital construction, AUTHORITY reserves the right to relocate AIRLINE by recapturing all or any portion of AIRLINE's Preferential Use Premises and Exclusive Use Premises and reassigning AIRLINE to alternative space comparable in size, quality, and finish. Prior to any relocation AUTHORITY and AIRLINE will meet and agree on the amount of reimbursement due AIRLINE for the cost of providing tenant improvements, based on construction cost estimates, competitive bids, contract prices, or other information acceptable to the parties, that are comparable to the level of tenant improvements in AIRLINE's current Airline Premises for similar facilities, plus relocation costs.

16.05 Use of Passenger Loading Bridges.

A. To the extent practical, aircraft that are capable of connecting to a loading bridge must use a Terminal Aircraft Apron equipped with a loading bridge for the enplaning and deplaning of passengers.

B. Aircraft that are not capable of connecting to a loading bridge will use those areas of the Terminal Aircraft Aprons designated by AUTHORITY and will be accessed from the ramp level unless otherwise approved by AUTHORITY.



## **ARTICLE 17: GOVERNMENT INCLUSION; SECURITY; ENVIRONMENTAL**

17.01 Government Agreements. This Agreement shall be subordinate to the provisions of any existing or future agreements between AUTHORITY and the United States Government or other governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the Airport, or as a condition precedent for the collection of PFCs, to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds. AUTHORITY agrees to provide AIRLINE written advance notice of any provisions which would adversely modify the material terms of this Agreement.

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

17.03 Nondiscrimination.

A. AIRLINE for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree as a covenant running with the land that (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airline Premises, (ii) in the construction of any improvements on, over, or under Airline Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, and (iii) AIRLINE shall use the Airline Premises in compliance with all other requirements imposed by or pursuant to 14 CFR 152 and Title VI of the Civil Rights Act of 1964 and 49 CFR, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Title and Regulations may be amended.

B. AIRLINE acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprises (DBE), as said regulations may be amended, and such other similar



regulations may be enacted, may be applicable to the activities of AIRLINE under the terms of this Agreement, unless exempted by said regulations, and AIRLINE hereby agrees to comply with the regulatory agencies, in reference thereto. These requirements may include, but not be limited to, compliance with DBE participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports and, if so directed, the contracting of specified percentages of goods and services contracts to DBEs.

C. In the event of breach of any of the above nondiscrimination covenants which is not cured AUTHORITY shall have the right to cancel this Agreement after such action as the United States Government may direct to enforce this covenant has been followed and completed, including exercise or expiration of appeal rights.

17.04 Security. AIRLINE, its officers, employees, agents, and those under its control, shall comply with security measures required of AIRLINE or AUTHORITY by the FAA or contained in any Airport master security plan approved by the FAA to include an Airport Tenant Security Program as outlined in 49 CFR Part 1542 respective to AIRLINE's Exclusive Use Premises and Preferential Use Premises. If AIRLINE, its officers, employees, agents, or those under its control shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against AUTHORITY, then, in addition to the provisions of Section 11.01, AIRLINE shall be responsible and shall reimburse AUTHORITY in the full amount of any such monetary penalty or other damages.

17.05 Environmental.

A. General Conditions.

(1) Notwithstanding any other provisions in this AGREEMENT, and in addition to any and all other requirements of this AGREEMENT or any other covenants, representations or warranties of AIRLINE, AIRLINE hereby expressly covenants, warrants and represents to AUTHORITY, in connection with AIRLINE's operations at the airport the following :

(2) AIRLINE is knowledgeable of all applicable federal, state, and local environmental laws, ordinances, rules, regulations and orders pertaining to the

protection of the environment (“Environmental Laws”) which apply to AIRLINE’s operations at the airport and acknowledges that such Environmental Laws change from time to time, and AIRLINE agrees to keep informed of any such future changes that apply to AIRLINE’s operations upon the Airport.

(3) AIRLINE agrees to comply with all applicable Environmental Laws which apply to AIRLINE’s operations. AIRLINE agrees to hold harmless and indemnify AUTHORITY and Lee County, Florida for any violation by AIRLINE of such applicable Environmental Laws, and for any non-compliance by AIRLINE with any permits issued to AIRLINE pursuant to such Environmental Laws, which hold harmless and indemnity shall include, but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures or monitor environmental conditions and for any monetary penalties, costs, expenses, or damages, including natural resource damages, imposed against AIRLINE, its employees, invitees, suppliers, or service providers or AUTHORITY by reason of AIRLINE’s violation or non-compliance, except to the extent such non-compliance is caused by AUTHORITY.

(4) AIRLINE agrees to cooperate with any investigation, audit or inquiry by AUTHORITY or any governmental agency, regarding possible violation by AIRLINE of any applicable Environmental Law in its operations upon the Airport.

(5) AIRLINE agrees that all remedies of AUTHORITY as provided herein with regard to AIRLINE’s violation of any Environmental Laws shall be deemed cumulative in nature and shall survive termination of this Agreement.

(6) AIRLINE agrees that any notice of violation, notice of non-compliance, or other enforcement action arising from alleged violation of applicable Environmental Laws shall be provided to AUTHORITY within twenty-four (24) hours of receipt by AIRLINE or AIRLINE’s agent. The notice must include copies of all material, non-privileged correspondence related to the violation, including the actual notice of violation, non-compliance, or other enforcement action and advisory notifications from the environmental agencies. Any violation or notice of violation or non-compliance with applicable Environmental Law shall be deemed a default under this Agreement. Such default may be cured within ten (10) days of receipt of notice of



default from AUTHORITY, or such longer period as may be required to effect a cure provided AIRLINE commences a cure within said ten (10) days and thereafter reasonably prosecutes the cure to completion. The AIRLINE agrees that the obligation for remedial action begins with discovery of the violation, not upon notice from an enforcement agency, unless applicable Environmental Laws prohibit remedial action without authorization from AUTHORITY and AUTHORITY has not so authorized the remedial action. Any such default which is not cured shall be grounds for termination of this Agreement.

(7) In entering this Agreement, AUTHORITY expressly relies on the covenants, representations, and warranties of AIRLINE as stated herein.

B. Stormwater.

(1) Notwithstanding any other provisions or terms of this Agreement, AIRLINE acknowledges that certain properties within the Airport, or on AUTHORITY owned land, are subject to stormwater rules and regulations. AIRLINE agrees to observe and abide by such stormwater rules and regulations as may be applicable to AUTHORITY's property and uses thereof.

(2) AIRLINE acknowledges that any stormwater discharge permit issued to the AUTHORITY may name AIRLINE as a co-permittee. AUTHORITY and AIRLINE both acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize cost of compliance. The AUTHORITY will provide AIRLINE with a copy of the AUTHORITY's Stormwater Pollution Prevention Plan (SWPPP), including, promptly, any updates to the SWPPP. The AIRLINE agrees to cooperate with the implementation of the AUTHORITY's SWPPP and not intentionally cause any violation to the SWPPP. 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. If applicable to AIRLINE's operations at the AIRPORT and required under applicable Environmental Law, AIRLINE shall



submit a separate Notice of Intent to use the State of Florida Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity to the Florida Department of Environmental Protection with a copy to the AUTHORITY. The AUTHORITY may also require the AIRLINE to secure a separate stormwater discharge permit if AIRLINE demonstrates non-compliance with the AUTHORITY's SWPPP and AIRLINE is required to obtain a permit under applicable Environmental Law.

(3) AIRLINE shall comply with any stormwater discharge permit requirements applicable to AIRLINE under Environmental Law, including but not limited to: certification of non-stormwater discharges; AUTHORITY's SWPPP; implementation of best management practices (as such term may be defined in applicable stormwater rules and regulations); annual training, and maintenance and submittal of records required by SWPPP. In complying with such requirements, AIRLINE will observe applicable deadlines set by the regulatory agency that has jurisdiction over the permit.

(4) AUTHORITY will provide AIRLINE with written notice of any stormwater discharge permit requirements applicable to AIRLINE and with which AIRLINE will be obligated to comply from time-to-time, including, but not limited to: certification of non-stormwater discharges; 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 AUTHORITY 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 AUTHORITY and AIRLINE, those stormwater permit requirements for which it has received written notice from AUTHORITY, and AIRLINE agrees that it will hold harmless and indemnify AUTHORITY for any violations or non-compliance with any such permit requirements.

C. Hazardous Substances.

(1) If AIRLINE is deemed to be a generator of hazardous waste, as defined by federal, state or local law, AIRLINE shall obtain, if required, a generator identification number from the EPA and the appropriate generator permit, if required, and shall comply with all applicable Environmental Laws, and any rules and regulations promulgated thereunder, including but not limited to, ensuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable law.

(2) AIRLINE agrees to provide AUTHORITY, upon request, copies of all hazardous waste permit application documentation, permits, monitoring reports, and safety data sheets, as well as transportation, response, storage and disposal plans, within ten (10) days of any such requests by AUTHORITY, all of which shall be maintained in compliance with applicable Environmental Laws. Each AIRLINE shall have, and shall implement as needed, to the extent required by applicable Environmental Laws, a written plan addressing containment and clean-up of fuel and/or oil spills.

(3) AIRLINE shall comply with all applicable Environmental Laws relating to such AIRLINE's transportation, handling, storage, treatment or disposal of Hazardous Substances at the airport, and any rules and regulations promulgated thereunder, including, but not limited to, ensuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable Environmental Law. AIRLINE shall require all agents, contractors, and all persons working for, or on behalf of the AIRLINE to be fully and properly trained in the handling and storage of all Hazardous Substances in compliance with any and all applicable Environmental Laws.

(4) AIRLINE agrees to maintain its Airline Premises in a clean and orderly condition, provide and utilize secondary containment for storage of fuels, oils, and other chemicals; take commercially reasonable efforts to minimize the impact of potential environmental risks (old batteries, old tires, oil containers); and perform regular inspection, preventative maintenance, and repair of its equipment and facilities.

(5) AIRLINE agrees that it will not place any underground or above ground storage tanks on the Airline Premises unless specifically authorized in writing by the AUTHORITY. If any tank is authorized by AUTHORITY, AIRLINE covenants and agrees that it will comply with all applicable Environmental Laws concerning the installation, operation, maintenance and inspection of above ground and underground storage tanks, including applicable financial responsibility. Upon AUTHORITY's written request, AIRLINE will be responsible for the removal and clean closure of any such tanks installed by AIRLINE upon the termination of the agreement.

(6) AIRLINE and its employees, agents, and contractors will comply with the AUTHORITY's Spill Prevention, Control, and Countermeasures Plan when using AUTHORITY owned and operated regulated containers.



## **ARTICLE 18: GENERAL PROVISIONS**

### **18.01 Subordination to Bond Resolution.**

A. This Agreement and all rights granted to AIRLINE hereunder are expressly subordinated and subject to the lien, covenants (including the rate covenants), and provisions of the pledges, transfer, hypothecation, or assignment made by AUTHORITY in the Bond Resolution. AUTHORITY and AIRLINE agree that to the extent required by the Bond Resolution or law, the holders of the Bonds or their designated representatives shall have the right to exercise any and all rights of AUTHORITY hereunder.

B. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to the Bond Resolution that would materially alter the terms and provisions of this Agreement or materially impact the levels of rents, fees, and charges paid by AIRLINE (herein referred to as Material Amendments).

C. For any Material Amendments or supplements desired solely by AUTHORITY for its own purposes, AUTHORITY and AIRLINE shall use their best efforts to agree on the implementation. However, in the event AUTHORITY and AIRLINE cannot agree on the implementation of any Material Amendments or supplements desired solely by AUTHORITY for its own purposes, AIRLINE, in addition to cancellation rights provided elsewhere in this Agreement, shall have the right to cancel this Agreement upon thirty (30) days' advance written notice.

D. AIRLINE agrees to execute all instruments, certificates, or other documents reasonably requested by AUTHORITY to assist AUTHORITY and bond counsel in determining and assuring that Bonds are issued in compliance with applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission and AIRLINE shall provide whatever additional relevant information is reasonably requested by AUTHORITY initially or on an ongoing basis in connection with complying with any of those rules and regulations.

18.02 Nonwaiver. No waiver of default by either party of any of the terms, covenants, or conditions of this Agreement to be performed, kept, and observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions to be performed, kept, and observed by the other party and shall not be deemed a waiver of any right on the part of the other party to cancel this Agreement as provided herein.

18.03 Passenger Facility Charge. AUTHORITY reserves the right to assess and collect PFC's subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the "PFC Act") and implementing regulations as may be supplemented or amended from time to time. AIRLINE shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by AIRLINE to remit PFCs within the time frame required by 14 CFR Part 158 shall be grounds for termination of this Agreement pursuant to Section 12.01C.

18.04 Rights Non-Exclusive. Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges, and licenses granted under this Agreement, are "non-exclusive" and AUTHORITY reserves the right to grant similar privileges to others.

18.05 Quiet Enjoyment.

A. AUTHORITY agrees that, so long as AIRLINE's payment of rents, fees, and charges is timely and AIRLINE keeps all covenants and agreements contained herein, AIRLINE shall peaceably have and enjoy its Airline Premises and all rights, privileges, and licenses of the Airport, its appurtenances and facilities granted herein, subject to the terms and conditions herein contained.

B. Consistent with the nature of AIRLINE's business, AIRLINE agrees that occupancy of its Airline Premises will be lawful and that it will not knowingly use or permit the use of Airline Premises in any way that would violate the terms of this Agreement, create a nuisance, or disturb other tenants or the general public. AIRLINE shall be responsible for the activity of its officers, employees, agents, and others under its control with respect to this provision.

18.06 Performance. The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

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



18.08 Rules and Regulations and Operational Instructions.

A. AIRLINE, its officers, employees, agents, and others under its control shall observe and obey all laws, regulations, and orders of the federal, state, county, municipal governments and AUTHORITY (acting in its governmental capacity) which may be applicable to AIRLINE'S operations at the Airport.

B. AUTHORITY, acting in its governmental capacity, may from time to time adopt, amend, or revise the Airport's rules and regulations and operating instructions governing the conduct of operations at the Airport, for reasons of safety, health, preservation of the property, or for the maintenance of the good and orderly appearance of the Airport. AIRLINE, its officers, employees, agents, and others under its control shall faithfully comply with and observe such reasonable and non-discriminatory rules and regulations and operating instructions, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental authority having appropriate jurisdiction. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to such rules and regulations and operating instructions that would materially alter the terms of this Agreement adversely.

C. AIRLINE shall be strictly liable and responsible for obtaining, maintaining current, and fully complying with, any and all permits, licenses, and other governmental authorizations, however designated, as may be required at any time throughout the entire Term of this Agreement by any federal, state, or local governmental entity or any court of law having jurisdiction over AIRLINE or AIRLINE's operations and activities.

18.09 Inspection. AIRLINE shall allow AUTHORITY's authorized representatives access to Airline Premises for the purpose of examining and inspecting said premises; for purposes necessary, incidental to, or connected with the performance of its obligations under this Agreement; or, in the exercise of its governmental functions. Except in the case of an emergency, AUTHORITY shall conduct such inspections during reasonable business hours, after reasonable prior notice to AIRLINE, not to interfere with AIRLINE's normal operations, and in the presence of AIRLINE's representative.

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



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

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

18.13 Savings. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against AUTHORITY by reason of the preparation of this Agreement by AUTHORITY.

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

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

18.16 Titles. Paragraph titles are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or extent of any provision of this Agreement.

18.17 Severability. In the event that any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not materially prejudice either AUTHORITY or AIRLINE in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

18.18 Amendments. Except as provided in Section and 8.04, no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

18.19 Most Favored Nation. AUTHORITY covenants and agrees not to enter into any basic airline use and lease agreement with any Air Transportation Company which (i) makes substantially similar use of the Airport, (ii) operates substantially similar aircraft, and (iii) utilizes substantially similar facilities to that of AIRLINE, which contains more favorable terms than this Agreement, or to grant to any such Air Transportation Company rights or privileges with respect to the Airport which are not afforded to AIRLINE hereunder unless substantially the same terms, rights, privileges, and facilities are concurrently made available to AIRLINE.

18.20 Other Agreements. Other than as set forth herein, nothing contained in this Agreement shall be deemed or construed to nullify, restrict, or modify in any manner the provisions of any other lease or contract between AUTHORITY and AIRLINE authorizing the use of the Airport, its facilities, and appurtenances.

18.21 Approvals.

A. Unless otherwise stated, whenever this Agreement calls for approval by AUTHORITY, such approval shall be evidenced by the written approval of the Executive Director.

B. Any approval required by either party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

18.22 Notice.

A. All notices, requests, consents, and approvals served or given under this Agreement shall be served or given in writing with proof of delivery. If intended for AUTHORITY, notices shall be delivered to:

Executive Director  
Lee County Port Authority  
Southwest Florida International Airport  
11000 Terminal Access Road, Suite 8671  
Ft. Myers, FL 33913

or to such other address as may be designated by AUTHORITY by written notice to AIRLINE.



B. Notices to AIRLINE shall be delivered to:

Amira Trebincevic  
Regional Director, Corporate Real Estate  
Delta Air Lines, Inc.  
1030 Delta Boulevard, Dept. 877  
Atlanta, GA 30354

or to such other address as may be designated by AIRLINE by written notice to AUTHORITY.

18.23 Agent For Service. It is expressly understood and agreed that if AIRLINE is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said state, AIRLINE shall appoint an agent for the purpose of service of process in any court action between it and AUTHORITY arising out of or based upon this Agreement. AIRLINE shall immediately, within ten (10) days of execution of this Agreement, notify AUTHORITY, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of Florida for service upon a non-resident engaging in business in the State. It is further expressly agreed, covenanted, and stipulated that, if for any reason, such service of process is not possible, as an alternative method of service of process, AIRLINE may be personally served out of the State of Florida by the registered mailing of such service at the address set forth in Section 18.22.

18.24 Governing Law and Legal Forum. This Agreement is to be read and construed in accordance with the laws of the State of Florida. All litigation concerning this Agreement by either party shall be instituted in the federal or state courts of Florida, and venue shall be in Lee County, Florida.

18.25 Force Majeure. Except as herein provided, neither AUTHORITY nor AIRLINE shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than the payment of rents, fees, and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, terrorism, weather conditions, riots, rebellion, or sabotage, pandemic or epidemic, or any other circumstances for which it is not responsible or which are not within its control.

18.26 Entire Agreement. It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by AIRLINE that AUTHORITY and AUTHORITY's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly



set forth, and that no claim or liability or cause for termination shall be asserted by AIRLINE against AUTHORITY for, and AUTHORITY shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement.

## **ARTICLE 19: CIVIL RIGHTS AND TITLE VI**

19.01 General Civil Rights Provisions. Airline agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefitting from Federal assistance. If the Airline transfers its obligation to another, the transferee is obligated in the same manner as the Airline. This provision obligates the Airline for the period during which the property is owned, used or possessed by the Airline and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

19.02 Compliance with Nondiscrimination Requirements. During the performance of this contract, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

A. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Port Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or

- b. Cancelling, terminating, or suspending a contract, in whole or in part.

F. Incorporation of Provisions: The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



19.03 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

A. Airline, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon.

19.04 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

A. Airline, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Airline will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land

and the facilities thereon.

19.05 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of

Transportation regulations at 49 CFR parts 37 and 38;

9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).



IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year first above written.

**DELTA AIR LINES, INC.**  
(Airline)

By: 

Print name: Holden Shannon

Title: SVP, Corporate Real Estate

Date: January 9, 2024

**LEE COUNTY PORT AUTHORITY**

By: \_\_\_\_\_  
Chairman or Vice Chairman,  
Board of Port Commissioners

Date: \_\_\_\_\_

Approved As To Form  
for the Reliance of the  
Lee County Port Authority only:

By: \_\_\_\_\_  
Port Authority Attorney

Date: \_\_\_\_\_

ATTEST:  
KEVIN KARNES, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_





**EXHIBIT B**  
**To**  
**AIRLINE – AIRPORT USE AND LEASE AGREEMENT**  
**With**  
**DELTA AIR LINES, INC.**

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**FOR**  
**SOUTHWEST FLORIDA INTERNATIONAL AIRPORT**

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Airline shall have in the Terminal:

1. the following Preferential Use Premises:
  - (a) Gate Position(s) **C2, C4, C6 and C8** as shown on page 1 of Exhibit C, with the proviso that if C2, which is currently out of service due to an Airport construction project, is not back in service by October 1, 2024, then notwithstanding this Exhibit B, or Exhibit C, C2 will not be added to the Airline Premises until such time as C2 is returned to service by the Authority in its sole discretion;
  - (b) the **4,095** square foot baggage make-up space (BMU), as shown on page 5 of Exhibit C;
  - (c) 1,133 square feet of ticket counter space, as shown on page 2 of Exhibit C;  
and
2. the following Exclusive Use Premises:
  - (a) 1,491 square feet of ticket office space;
  - (b) 482 square feet of baggage service office space;
  - (c) 189 square feet of curbside check-in space
  - (d) 48 square feet of curbside storage space;
  - (e) 2,879 square feet of operations space; and
3. the right of joint use with other airlines to use the Baggage Claim Area in the Terminal as shown on Page 5 of attached Exhibit C.

If Gate Position C2 is not returned to service by the Authority by the beginning of the term of

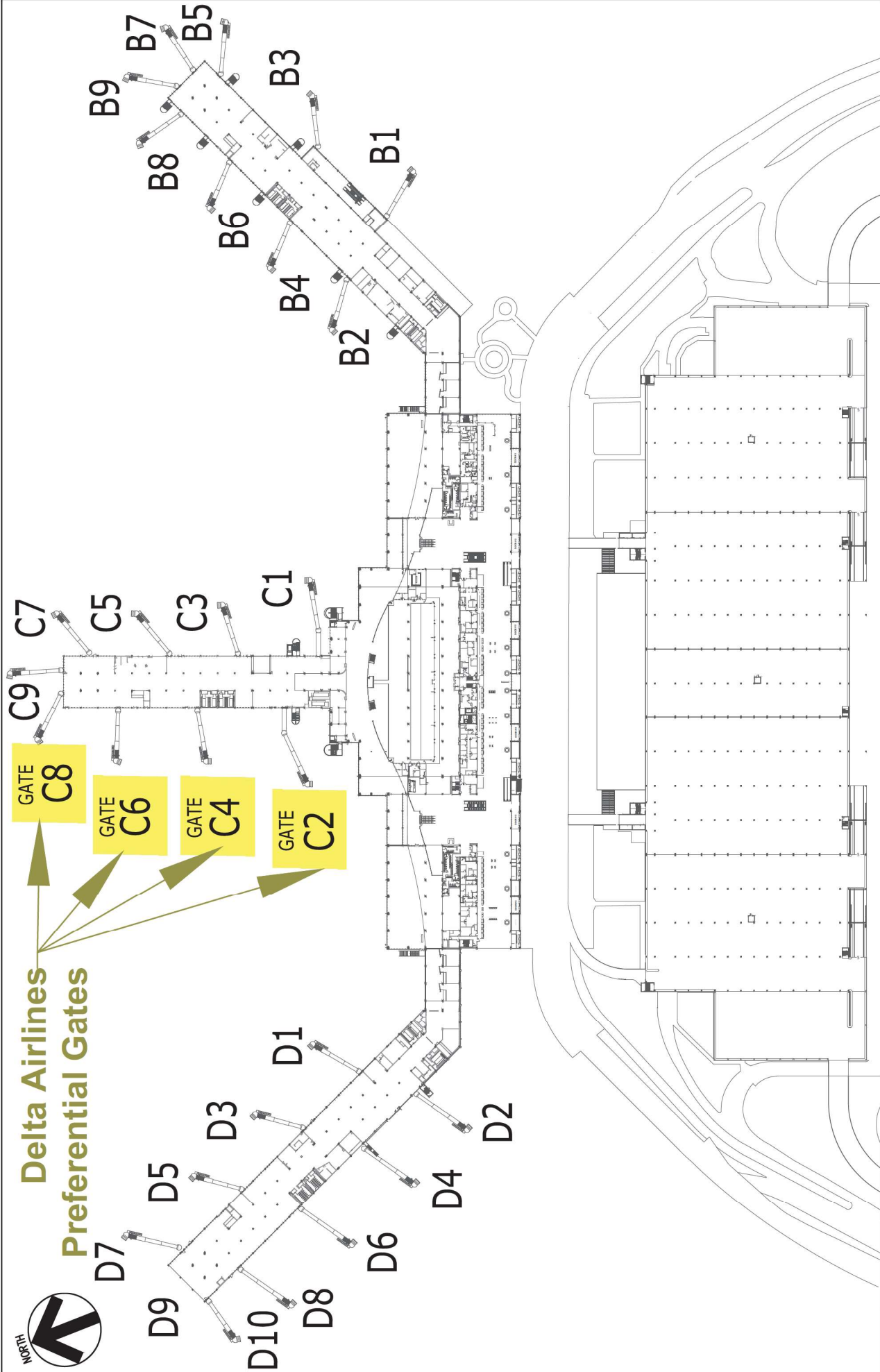


this New Agreement, i.e. by October 1, 2024, then, from that date until C2 is returned to service:

- (a) the Authority will use its best reasonable efforts to accommodate AIRLINE's flights, which would have otherwise used C2, on a common use gate;
- (b) gate C2 will not be considered AIRLINE's gate, and AIRLINE will not be billed for C2; and
- (c) AIRLINE's use of common use gates will be billed at the Authority's standard per-turn charges for use of a common use gate, provided however that at the end of each Fiscal Year in which C2 is out of service for the terminal expansion project for any part of a Fiscal Year during the term of this New Agreement, the Authority will reconcile AIRLINE's use of the common use gate to ensure that the total value of per-turn charges does not exceed what AIRLINE would have been charged if AIRLINE had been able to use C2 as a preferential gate.

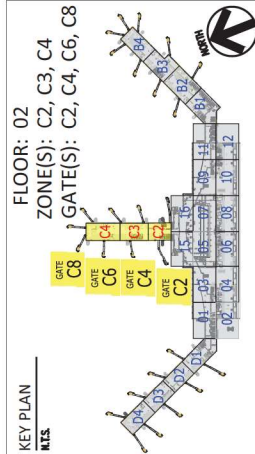


**Delta Airlines  
Preferential Gates**



**Delta Airlines**

KEY PLAN  
KES



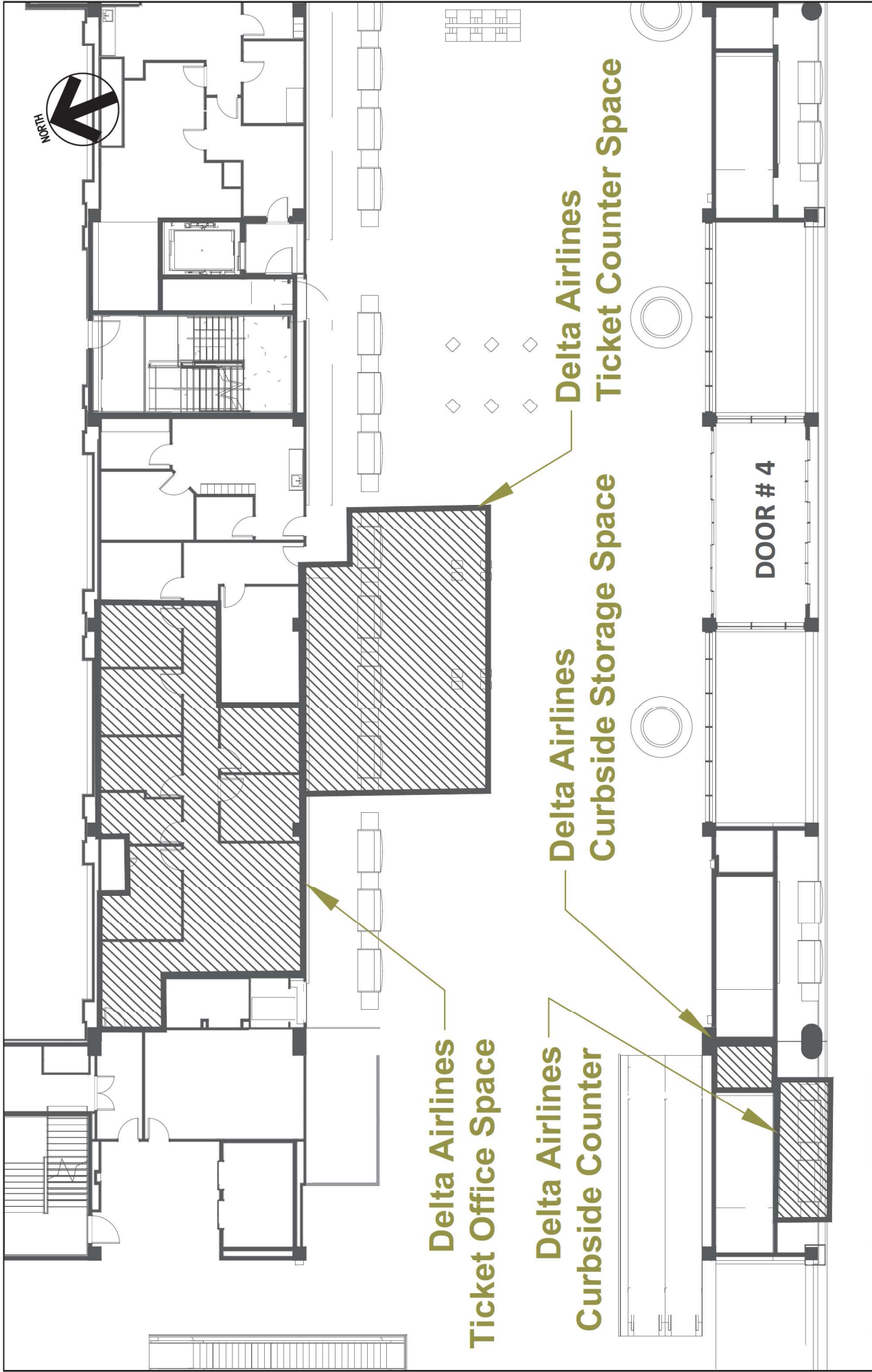
**LEE COUNTY PORT AUTHORITY**


**Exhibit C**

**Preferential Gate(s) Assignment**

**DATE: 21 - July - 2023**

**Page 1 of 5**





**Delta Airlines**

**LEE COUNTY PORT AUTHORITY**

**Exhibit C**

**Ticket Office, Ticket Counter, Curbside Counter & Curbside Storage**

**DATE: 2 1 - July - 2023**

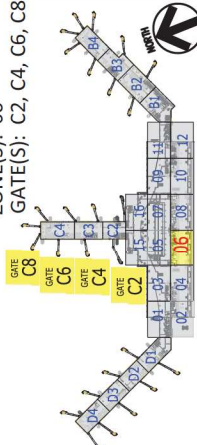
**Page 2 of 5**

**KEY PLAN**

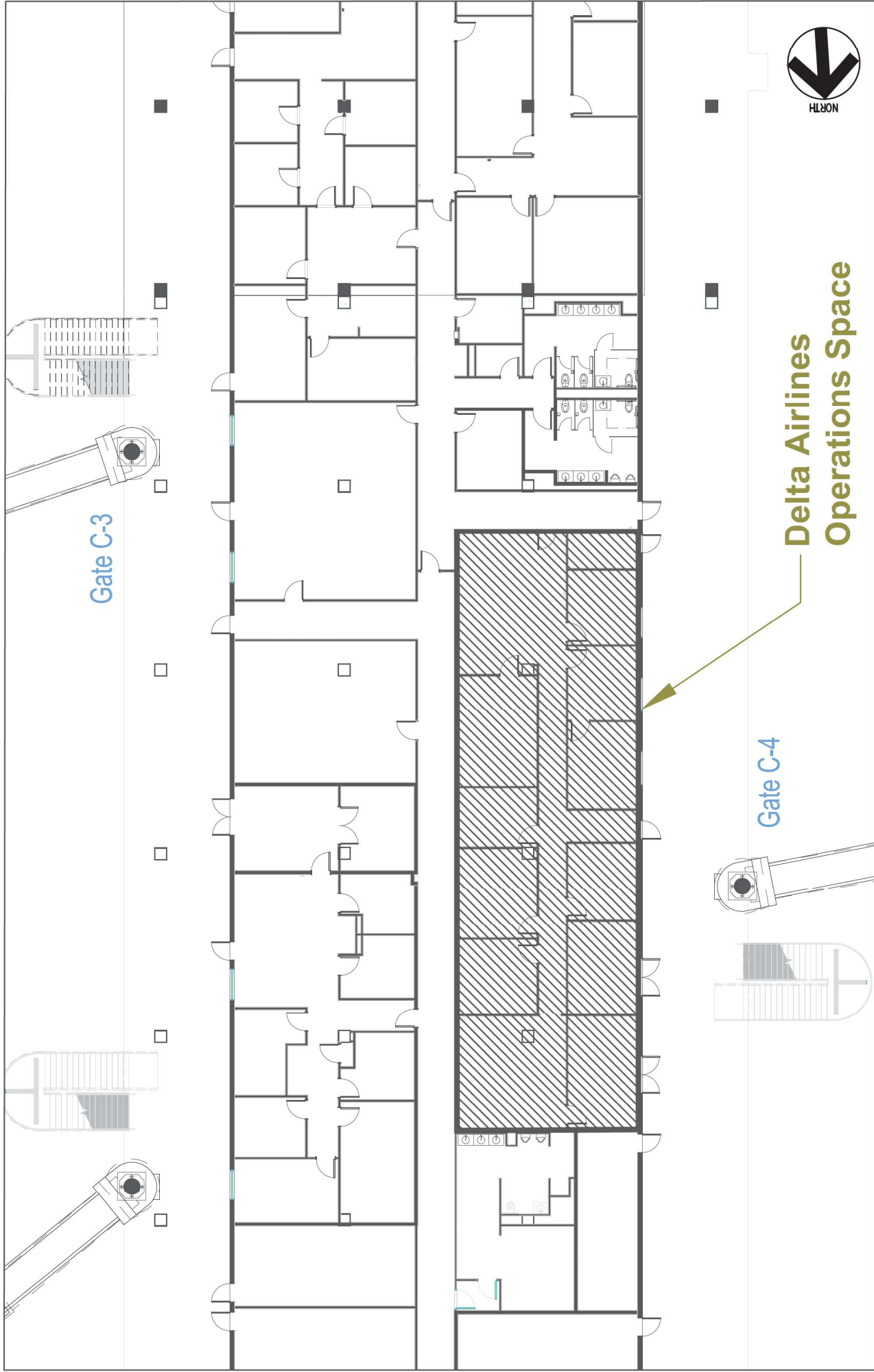
**FLOOR: 02**

**ZONE(S): 06**

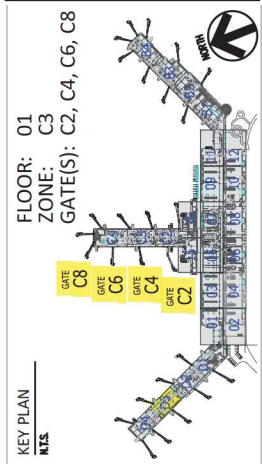
**GATE(S): C2, C4, C6, C8**





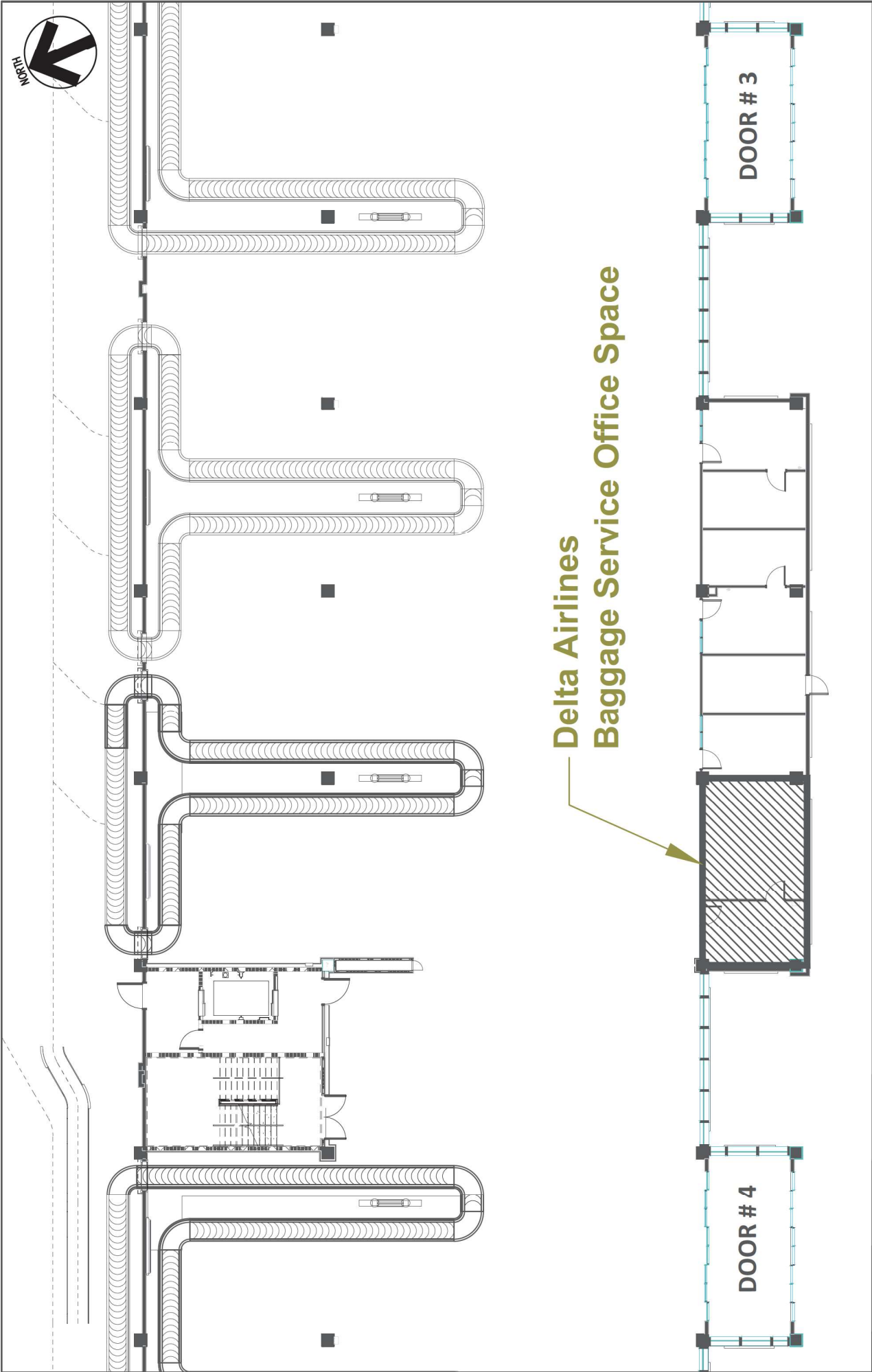


LEE COUNTY PORT AUTHORITY	
Exhibit C	
Operations Space	
DATE: 21 - July - 2023	Page 3 of 5



**Delta Airlines**





LEE COUNTY PORT AUTHORITY	
Exhibit C	
Baggage Service Offices	
DATE: 21 - July - 2023	Page 4 of 5

KEY PLAN

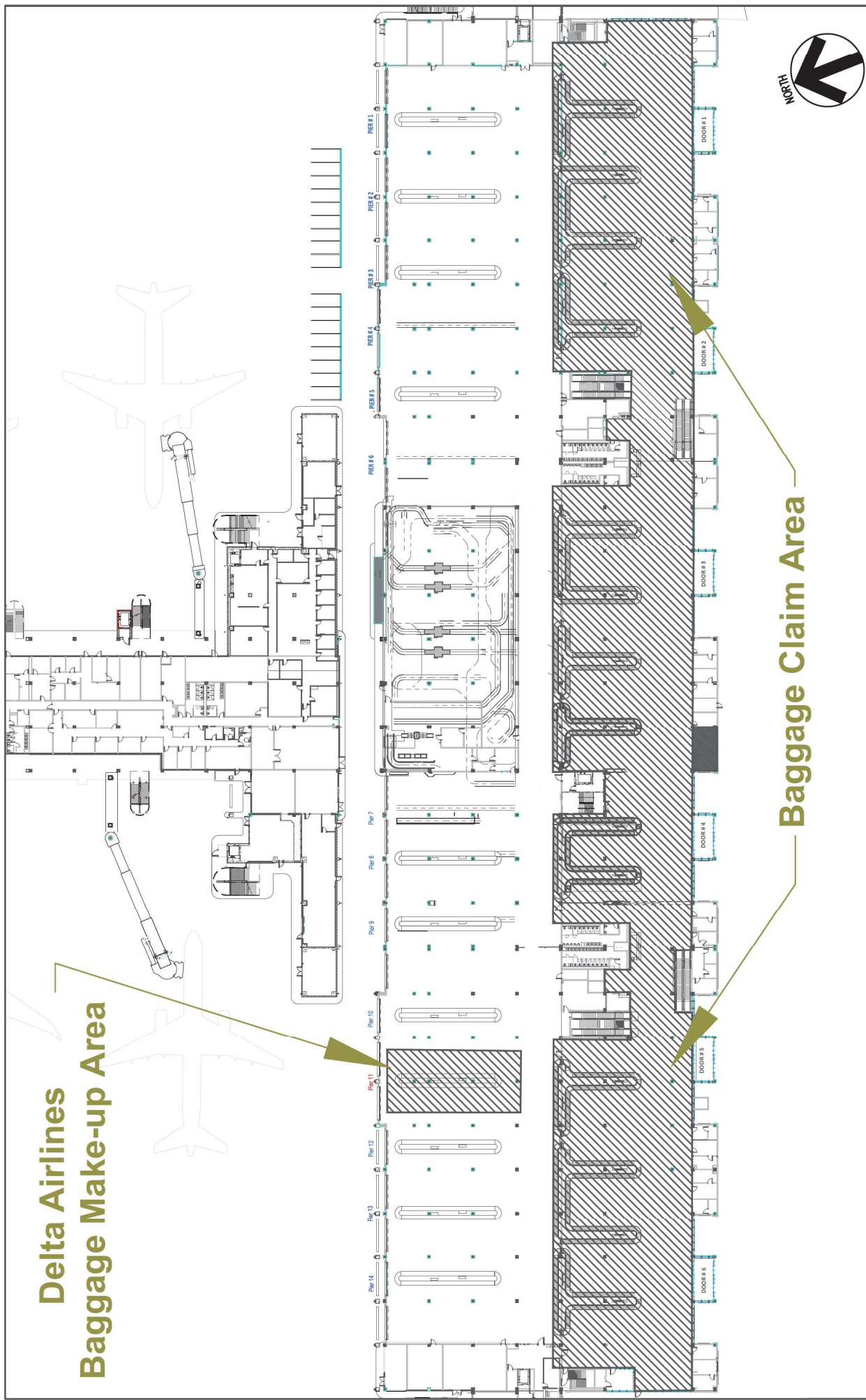
FLOOR: 01  
ZONE: 06  
GATE(S): C2, C4, C6, C8

N

**Delta Airlines**

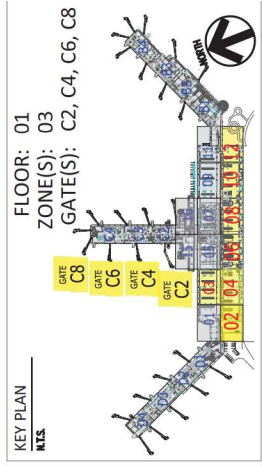
LEE COUNTY PORT AUTHORITY  
Southwest Florida  
International Airport

# Delta Airlines Baggage Make-up Area



Baggage Claim Area

LEE COUNTY PORT AUTHORITY	
Exhibit C	
Baggage Make-up & Baggage Claim Area	
DATE: 21 - July - 2023	Page 5 of 5



Delta Airlines





Southwest Florida International Airport Airline-Airport Use and Lease Agreement  
PORT AUTHORITY and AIRLINE Maintenance Responsibilities

# EXHIBIT D

## 1. Air Conditioning

	EXCLUSIVE USE PREMISES		PREFERENTIAL USE				COMMON USE AREAS			
	Ticket and Bag Service Offices	Operations Areas	Ticket Counters	Hold Rooms	Aircraft Aprons	Baggage Make Up	Baggage Claim	Tug Drives	Inbound Baggage Systems	Outbound Conveyor Systems
a. Maintenance	P	P	P	P	N/A	N/A	P	N/A	N/A	N/A
b. Operations	P	P	P	P	N/A	N/A	P	N/A	N/A	N/A
c. Chilled Air Distribution	P	P	P	P	N/A	N/A	P	N/A	N/A	N/A

## 2. Heating

a. Maintenance	P	P	P	P	N/A	N/A	P	N/A	N/A	N/A
b. Operations	P	P	P	P	N/A	N/A	P	N/A	N/A	N/A
c. Warm Air Distribution	P	P	P	P	N/A	N/A	P	N/A	N/A	N/A

## 3. Lighting

a. Bulb Replacement	A	A	P	P	P	P	P	P	N/A	N/A
b. Maintenance	P	P	P	P	P	P	P	P	N/A	N/A

## 4. Water

a. Distribution	P	P	N/A	N/A	P	N/A	N/A	N/A	N/A	N/A
b. Fixtures	P	P	N/A	N/A	P	N/A	N/A	N/A	N/A	N/A

## 5. Sewage

a. Distribution	N/A	P	N/A	N/A	P	N/A	N/A	N/A	N/A	N/A
b. Fixtures	N/A	P	N/A	N/A	P	N/A	N/A	N/A	N/A	N/A

## 6. Maintenance

a. Other than Structure	P	P	P	P	P	P	P	P	P	P
b. Structure	P	P	P	P	P	P	P	P	P	P
c. Exterior	N/A	P	N/A	P	P	P	P	P	P	P
d. Markings/Signage	A&P	N/A	A&P	P	P	P	P	P	P	P
e. Electrical Maintenance	P	P	P	P	P	P	P	P	P	P
f. Mechanical Systems	P	P	P	P	N/A	P	P	P	P	P

## 7. Cleaning

a. Exterior Windows	N/A	P	N/A	P	N/A	N/A	P	N/A	N/A	N/A
b. Interior Windows	A	A	N/A	P	N/A	N/A	P	N/A	N/A	N/A
c. Custodial Services	A	A	P	P	P	P	P	P	P	P

A = Airline Responsibility

P = Port Authority Responsibility

N/A = Not Applicable

## MONTHLY STATISTICS REPORT

SIGNATURE: \_\_\_\_\_

\*\*utilize additional columns for additional gates/landings

**EXHIBIT F**  
**To Signatory Airline Agreement for**  
**Southwest Florida International Airport**

**RATE AND FEE SCHEDULE**

**Section I – Definitions**

The following words, terms and phrases used in this Exhibit “F” shall have the meanings set forth in this Section and the meanings shall apply to both the singular and plural forms of such words, terms, and phrases. Additional words, terms and phrases used in this Exhibit “F”, but not defined in this Section, shall have the meanings ascribed to them in the individual sections of this Exhibit “F”, or, if not therein, in Article 1 of this Agreement, or if neither, in the Bond Resolution. The specific methodologies for calculating the rates, fees and charges defined below can be found in Section II of this Exhibit “F”.

1. Air Cargo Cost Center shall mean the Cost Center as further described in Section IV: Cost Centers of this Exhibit “F”.
2. Airfield Cost Center shall be as defined in Article 1 of this Agreement.
3. Aviation Cost Center shall mean the Cost Center as further described in Section IV: Cost Centers of this Exhibit “F”.
4. Baggage Handling System (BHS) shall mean the Airport’s outbound baggage handling system (but excluding baggage makeup space, i.e. “BMUs”) used to deliver checked baggage to departing aircraft.
5. Baggage Handling System (BHS) Cost Center shall be as defined in Article 1 of this Agreement.
6. Baggage Handling System (BHS) Fee shall mean a fee assessed by the Authority on a per Enplaned Passenger basis for use of the Baggage Handling System.
7. Common Use Ticket Counter shall mean a Ticket Counter that is not leased and therefore available to be assigned by the AUTHORITY for use by any Air Transportation Company on a per-Turn basis.
8. Common Use Ticket Counter Fee shall mean a fee assessed by the Authority for each Turn using a Common Use Ticket Counter and shall be calculated as shown in Table F-6.
9. Direct Cost Centers includes the Cost Centers listed in Section IV: Cost Centers of this Exhibit “F”.
10. Federal Assistance Funds shall mean federal relief funding including but not limited to COVID relief legislation such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Coronavirus Response and Relief Supplemental Appropriations Acts (CRRSAA), and the American Rescue Plan Act (ARPA).
11. Federal Inspection Services (FIS) Facility includes the FIS space, which the parties agree will be deemed to be 44,237 square feet, unless and until the AUTHORITY determines, in its sole discretion, that a different area will be applied due to physical changes to the terminal which increase or decrease said area.
12. Federal Inspection Services (FIS) Fee shall mean a fee assessed by the Authority for use of the FIS Facility by an Air Transportation Company transporting international passengers.



13. Ground Transportation Cost Center shall mean the Cost Center as further described in Section IV: Cost Centers of this Exhibit “F”.
14. Indirect Cost Centers are the Cost Centers listed in Table F-10 of Section IV: Cost Centers of this Exhibit “F”.
15. Joint Use Fee shall mean the fee charged for the right to use the Joint Use Premises.
16. Landing Fee shall be defined as it is in Article 1: Definitions of this Agreement and shall be calculated as shown in Table F-2.
17. LCPA shall mean the Lee County Port Authority.
18. Net Revenue shall mean Revenues less Operating Expenses, net of any Federal Assistance Funds.
19. Non-Aviation Cost Center shall mean the Cost Center as further described in Table F-9 of Section IV: Cost Centers of this Exhibit “F”.
20. Non-Signatory Airline shall mean an Air Transportation Company operating at the Airport that is not a Signatory Airline.
21. Non-Signatory Premium shall be ten percent (10%) over the rate or charge applicable to Signatory Airlines.
22. Per Use Baggage Makeup Fee shall mean a fee assessed by the Authority for each Turn using a Baggage Makeup Space (other than the use of a Signatory Airline’s own preferential BMU by that Signatory Airline or its Designated Affiliate) and shall be calculated as shown in Table F-7.
23. Per Use Baggage Makeup Space means the space associated with a post-security conveyor belt or “pier” in the Terminal, used to facilitate handling of outbound baggage. The parties agree that, regardless of actual variations, for purposes of calculations pursuant to Exhibit F, each Per Use Baggage Makeup Space will be deemed to be 4,095 square feet, unless and until the AUTHORITY determines, in its sole discretion, that a different area will be applied due to physical changes to the terminal which increase or decrease said area.
24. Per Use Gate shall mean a Gate Position that is not assigned on a preferential use basis to a Signatory Airline.
25. Per Use Gate Fee shall mean a fee assessed by the Authority for each Turn using a Gate (other than the use of a Signatory Airline’s own preferential use Gate by that Signatory Airline or its Designated Affiliate) for a Period of Use, or for any 90-minute time period or portion thereof in excess of the Period of Use.
26. Pledged PFC Revenues shall mean PFC Revenues received in excess of Debt Service that are subsequently transferred to the PFC Capital Fund and used on approved projects as determined by the FAA.
27. Port Authority Investments means the capital projects funded with Port Authority discretionary cash.
28. Rate Setting Period shall mean October 1 through September 30 of the upcoming Fiscal Year.

29. Standard Holdroom Square Footage shall mean 2,821 square feet.
30. Terminal Cost Center shall be as defined in Article 1 of this Agreement.
31. Terminal Rental Rate shall mean the rental rate applicable to Exclusive Use Premises, and the charges imposed by the Authority on a per square foot basis for the use of the Preferential Use Premises, and shall be calculated by the Authority as shown in Table F-1.
32. Ticket Counter shall mean each two-position ticket counter within the Terminal usable by an Air Transportation Company for the processing of passengers and baggage for a departing flight, including the ticket counter itself, kiosks, queuing space, and space behind the ticket counter position.
33. Turn shall mean a single inbound and outbound flight operation, for which an Air Transportation Company uses a Gate Position, Ticket Counter, or BMU.
34. Turns Per Day shall mean four (4) Turns per day.

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

## **Section II – Rate Calculations**

1. Explanation of Rate Calculation Line Items. The following line items listed in Table F-1 – F-3 are included in the calculation of Terminal Rental Rate, Landing Fee, and BHS Fee for each Rate Setting Period. Each line item in Tables F-1 – F-3 is identified by the corresponding letter set forth below.

**Line Item A.** Investment Service. This line item includes Investment Service (as defined in Article 1: Definitions of this Agreement) allocated to the Terminal, Airfield, and BHS Cost Center, respectively.

**Line Item B.** Operating Expenses. The line item includes those expenses directly allocated to the Terminal, Airfield, or BHS Cost Centers (Direct Operation and Maintenance Expenses) and those expenses associated with operation and maintenance of the Airport and allocated to the Indirect Cost Centers (Indirect Operation and Maintenance Expenses). Indirect Operation and Maintenance Expenses shall be allocated to the Direct Cost Centers by the Authority as set forth in Section IV(3) below. The sum of Direct Operation and Maintenance Expenses and Indirect Operation and Maintenance Expenses are hereinafter referred to as “Operation and Maintenance Expenses”.

**Line Item C.** Operating Expense Reserve. The line item includes the Operating Expenditure Reserve Requirement for the current Rate Setting Period allocated to the Terminal, Airfield, and BHS Cost Center, respectively.

**Line Item D.** Amortization. The line item includes Amortization allocated to the Terminal, Airfield, and BHS Cost Center, respectively.

**Line Item E.** Total Requirement. The Total Requirement is the sum of the following line items: Investment Service, Operating Expenses, Operating Expense Reserve, and Amortization.



**Line Item F.** Credits. The line item identifies the Credits to the Total Requirement. Credits to the Terminal Total Requirement in Table F-1 shall be the Pledged PFC Revenues. Credits to the Airfield Total Requirement in Table F-2 shall be the Non-Airline Revenues attributable to the Airfield Cost Center. Credits to the BHS Total Requirement in Table F-3 shall be the Pledged PFC Revenues.

**Line Item G.** Net Requirement. The Net Requirement equals Total Requirement minus Credits.

**Line Item H.** Line item H in Tables F-1 – F-3 shall be defined as follows:

- Total Rentable Space. Total Rentable Space in Table F-1 has the meaning set forth in Article 1.
- Total Landed Weight. Total Landed Weight in Table F-2 means the Maximum Gross Landing Weight for all Air Transportation Companies at the Airport, including Signatory Airlines and other airlines.
- Enplaned Passengers. Enplaned Passenger shall be defined as it is in Section 1 – Definitions.

**Line Item I.** Line item I in Tables F-1 – F-3 shall be defined as follows:

- Terminal Rental Rate shall be defined as it is in Section 1 – Definitions.
- Landing Fee shall be defined as it is in Section 1 – Definitions.
- BHS Fee shall be defined as it is in Section 1 – Definitions.

**Line Item J.** Non-Signatory Premium shall be defined as it is in Section 1 – Definitions.

**Line Item K.** Line item I in Table F-1 and F-3 shall be calculated as follows:

- Non-Signatory Terminal Rental Rate. The Non-Signatory Terminal Rental Rate equals the Terminal Rental Rate increased by the Non-Signatory Premium.
- Non-Signatory BHS Fee. The Non-Signatory BHS Fee equals the Average BHS Fee Cost per Enplaned Passenger increased by the Non-Signatory Premium.

2. Calculation of Terminal Rental Rate, Landing Fee, and BHS Fee. The Terminal Rental Rate, Landing Fee, and BHS Fee for each Rate Setting Period shall be calculated as set forth in this subsection.

A. Terminal Rental Rate. The methodology for calculating the Terminal Rental Rate is set forth in Table F-1 below.



<b>Table F-1. Terminal Rental Rate Calculation</b>	
<b>Description</b>	<b>Line Item</b>
Terminal Investment Service	A
Terminal Operating Expenses	B
Terminal Operating Expense Reserve	C
Terminal Amortization	D
Total Requirement	$E = A+B+C+D$
Less: Credits to Total Requirement	F
Net Requirement	$G = E - F$
Total Rentable Space (in square feet)	H
Terminal Rental Rate (per square foot per year)	$I = G / H$
Non-Signatory Premium (per square foot per year)	J
<b>Non-Signatory Terminal Rental Rate (per s.f. per year)</b>	<b><math>K = I + J</math></b>
Signatory Airline Leased Space	L
Signatory Airline Terminal Rental Revenue, before Additional Concourse E Protection	$M = I * L$
Additional Concourse E Protection	N
Signatory Airline Net Requirement	$O = M + N$
<b>Signatory Terminal Rental Rate (per s.f. per year)</b>	<b><math>P = O / L</math></b>

B. Landing Fee. The methodology for calculating the Landing Fee is set forth in Table F-2 below.

<b>Table F-2. Landing Fee Calculation</b>	
<b>Description</b>	<b>Line Item</b>
Airfield Investment Service	A
Airfield Operating Expenses	B
Airfield Operating Expense Reserve	C
Airfield Amortization	D
Total Requirement	$E = A+B+C+D$
Less: Credits to Total Requirement	F
Net Requirement	$G = E - F$
Total Landed Weight (1,000lbs)	H
<b>Landing Fee, before Extraordinary Coverage Protection</b>	<b><math>I = G / H</math></b>

- C. Baggage Handling System Fee. The methodology for calculating the Baggage Handling System Fee is set forth in Table F-3 below.

<b>Table F-3. Baggage Handling System (BHS) Fee</b>	
<b>Description</b>	<b>Line Item</b>
BHS Investment Service	A
BHS Operating Expenses	B
BHS Operating Expense Reserve	C
BHS Amortization	D
Total Requirement	$E = A+B+C+D$
Less: Credits to Total Requirement	F
Net Requirement	$G = E - F$
Total Enplaned Passengers	H
<b>Average BHS Fee Cost per Enplaned Passenger</b>	<b><math>I = G / H</math></b>
Non-Signatory Premium	J
<b>Non-Signatory BHS Fee</b>	<b><math>K = I + J</math></b>
Non-Signatory Enplaned Passengers	L
Non-Signatory BHS Revenues	$M = K * L$
Signatory BHS Revenues	$N = G - M$
Signatory Enplaned Passengers	O
<b>Signatory BHS Fee Per Enplaned Passenger</b>	<b><math>P = N / O</math></b>

3. Calculation of Joint Use Fee. The methodology for calculating the Joint Use Fee is set forth in Table F-4 below.

<b>Table F-4. Joint Use Fee</b>	
<b>Description</b>	<b>Line Item</b>
90% of TSA Security Checkpoint Space	A
TSA Baggage Screening Space (s.f.)	B
Airlines' Share of TSA Security Check Point Space and Baggage Screening Space	$C = A + B$
Baggage Claim Area (s.f.)	D
Total Joint Use Space (s.f.)	$E = C+D$
Terminal Rental Rate (per s.f. per year)	F
<b>Total Joint Use Requirement</b>	<b><math>G = E * F</math></b>
Total (Airport) Enplaned Passengers	II
<b>Average Joint Use Fee Cost per Enplaned Passenger</b>	<b><math>I = G / H</math></b>

Non-Signatory Premium (10%)	J
<b>Non-Signatory Joint Use Fee</b>	<b><math>K = I + J</math></b>
Non-Signatory Enplaned Passengers	L
Non-Signatory Joint Use Revenues	$M = K * L$
Signatory Joint Use Requirement	$N = G - M$
Signatory Portion to be Allocated Equally (20%)	O
Signatory Portion to be Allocated Per Enplaned Passenger (80%)	P
Signatory Portion to be Allocated Equally (\$)	$Q = N * O$
Signatory Portion to be Allocated Per Enplaned Passenger (\$)	$R = N * P$
Number of Signatory Airlines (prorated if applicable)	S
Signatory Enplaned Passengers	T
<b>Signatory Joint Use Fee (per Signatory Airline)</b>	<b><math>U = Q / S</math></b>
<b>Signatory Joint Use Fee (per Enplaned Passenger)</b>	<b><math>V = R / T</math></b>

4. Miscellaneous Fees and Charges.

- A. FIS Fee. The FIS Fee shall be equal to \$2.00 and charged per international Deplaned Passenger.
- B. Per Use Gate Fee. The total per use gate requirement shall be equal to the product of the applicable Terminal Rental Rate (i.e., Signatory or Non-Signatory) for the Rate Setting Period multiplied by the Standard Holdroom Square Footage. The Per Use Gate Fee shall be determined by dividing the total per use gate requirement by the days in a year (365) and dividing again by the Turns Per Day. The methodology for calculating the Per Use Gate Fee is set forth in Table F-5 below.

<b>Table F-5. Per Use Gate Fee</b>	
<b>Description</b>	<b>Line Item</b>
Standard Holdroom Square Footage	A
Terminal Rental Rate	B
Total Per Use Gate Requirement	$C = A * B$
Divided by Days in Year	D
Divided by Turns Per Day	E
<b>Signatory Per Use Gate Fee (Per Turn)</b>	<b><math>F = C / D / E</math></b>
Non-Signatory Premium	G
<b>Non-Signatory Per Use Gate Fee (Per Turn)</b>	<b><math>H = F + G</math></b>

- C. Common Use Ticket Counter Fee. The total Common Use Ticket Counter requirement shall be equal to the product of the applicable Terminal Rental Rate (i.e., Signatory or Non-Signatory) for the Rate Setting Period multiplied by the Common Use Ticket Counter Space. The Common Use Ticket Counter Fee shall be determined by dividing the total per use ticket counter requirement



by the Days in a Year (365) and dividing again by the Turns Per Day. The methodology for calculating the Common Use Ticket Counter Fee is set forth in Table F-6 below.

<b>Table F-6. Common Use Ticket Counter Fee</b>	
<b>Description</b>	<b>Line Item</b>
Width (in ft.) of standard Common Use Ticket Counter Space (2 positions)	A
Depth (in ft.) of standard Common Use Ticket Counter Space	B
Area of standard Common Use Ticket Counter Space (s.f.)	$C = A * B$
Terminal Rental Rate (per s.f. per year)	D
Total standard Common Use Ticket Counter Requirement	$E = D * C$
Divided by Days in Year	F
Divided by Turns Per Day	G
<b>Signatory Common Use Ticket Counter Fee (Per Turn)</b>	<b><math>H = E / F / G</math></b>
Non-Signatory Premium	I
<b>Non-Signatory Common Use Ticket Counter Fee (Per Turn)</b>	<b><math>J = H + I</math></b>

- D. Per Use Baggage Makeup Fee. The per use baggage makeup requirement shall be equal to the product of the applicable Terminal Rental Rate (i.e., Signatory or Non-Signatory) for the Rate Setting Period multiplied by the standard Per Use Baggage Makeup Space. The Per Use Baggage Makeup Fee shall be determined by dividing the total per use baggage makeup requirement by the days in a year (365) and dividing again by the Turns Per Day. The methodology for calculating the Per Use Baggage Makeup Fee is set forth in Table F-7 below.

<b>Table F-7. Per Use Baggage Makeup Fee</b>	
<b>Description</b>	<b>Line Item</b>
Standard Baggage Makeup Space (s.f.)	A
Terminal Rental Rate (per s.f. per year)	B
Per Use Baggage Makeup Requirement	$C = A * B$
Divided by Days in Year	D
Divided by Turns Per Day	E
<b>Signatory Per Use Baggage Makeup Fee (Per Turn)</b>	<b><math>F = C / D / E</math></b>
Non-Signatory Premium	G
<b>Non-Signatory Per Use Baggage Makeup Fee (Per Turn)</b>	<b><math>H = F + G</math></b>

### **Section III – Revenue Sharing**

1. Revenue Sharing. Revenue Sharing shall be calculated by the Authority in accordance with this Section. The following line items listed in Table F-8 are included in the calculation of Revenue Sharing. Each line item in Table F-8 is identified by the corresponding letter set forth below.

- Line Item A.** Net Funds Remaining. Net Funds Remaining shall be equal to Net Revenue less Debt Service, Short-Term Financing, and allocations to the O&M Reserve Requirement. Availability of Revenue Sharing shall be subject to and contingent upon the Authority's ability to satisfy its financial obligations and to meet its Debt Service Coverage requirements in each Fiscal Year.
- Line Item B.** Credits. This line item identifies Credits to the Net Funds Remaining. Credits to the Net Funds Remaining in Table F-8 are the Amortization of Port Authority Investments.
- Line Item C.** Net Funds to be Shared. Net Funds to be Shared shall be calculated as Net Funds Remaining less any Credits.
- Line Item D.** LCPA Share. The LCPA Share of the Net Funds to be Shared shall be: (a) for the three consecutive Fiscal Years beginning October 1, 2024, and ending September 30, 2027, seventy percent (70%); and (b) for the remaining Fiscal Years during the term hereof, sixty percent (60%).
- Line Item E.** Airline Share. The Airline Share of the Net Funds to be Shared shall be: (a) for the three consecutive Fiscal Years beginning October 1, 2024, and ending September 30, 2027, thirty percent (30%); and (b) for the remaining Fiscal Years during the term hereof, forty percent (40%).
- Line Item F.** LCPA Revenue. LCPA Revenue shall be calculated as the product of the Net Funds to be Shared and the LCPA Share.
- Line Item G.** Airline Revenue. Airline Revenue shall be calculated as the product of the Net Funds to be Shared and the Airline Share.

2. Table F-8. The methodology for calculating LCPA and Airline Shares of Revenue Sharing is set forth in Table F-8 below, provided however that the respective LCPA Share and Airline Share used for Line Items D and E will vary by Fiscal Year as set forth above. Each Signatory Airline's individual share of Item G (if any) will be based on the ratio of each Signatory Airline's (including its Designated Affiliates') Enplaned Passengers to the total of all Signatory Airlines' (and their Designated Affiliates') Enplaned Passengers at the Airport for that Fiscal Year.

<b>Table F-8. Revenue Sharing</b>	
<b>Description</b>	<b>Calculation</b>
Net Funds Remaining	A
Less: Credits to Net Funds Remaining	B
Net Funds to be Shared	$C = A - B$
LCPA Share (%)	D
Airline Share (%)	E
<b>LCPA Revenue</b>	$F = C * D$
<b>Airline Revenue</b>	$G = C * E$



## Section IV – Cost Centers

1. Direct Cost Centers. The Direct Cost Centers include, but are not limited to, those Cost Centers listed in Table F-9 below.

<b>Table F-9. Direct Cost Centers</b>	
<b>Cost Center</b>	<b>Description of Area Included or Functional Activity</b>
Airfield	Those portions of the Airport provided for the landing, taking off, and taxiing of aircraft, including without limitation, approach and turning zones, clear zones, navigation 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 property purchased for noise mitigation purposes, as may be revised from time to time (see Article 1).
Baggage Handling System (or BHS)	Outbound Baggage Handling System used to deliver checked baggage to departing aircraft, which includes systems, equipment, and carousels at the Airport, but exclusive of the TSA Baggage Screening Space, TSA inspection equipment and BMUs (see Article 1).
Air Cargo	Areas and facilities that are related to the air cargo activities at the Airport, including the air cargo aircraft parking apron.
Terminal	The Airport's passenger terminal building, including the Terminal Aircraft Aprons (see Article 1).
Ground Transportation	Areas and facilities related to public automobile parking, automobile rental agencies, ride share companies, taxi and limousine parking areas, and hotel shuttle operations.
Aviation	Areas and facilities related to general aviation (GA), including any GA terminal facilities, fixed base operator (FBO) facilities, fueling facilities, hangars, flight kitchens, and any other facilities for the purposes of supporting general aviation-related activities.
Non-Aviation	Areas and facilities not directly related to aviation purposes, including, but not limited to, commercial buildings, U.S. Postal Service facilities, and various ground leases and facilities.

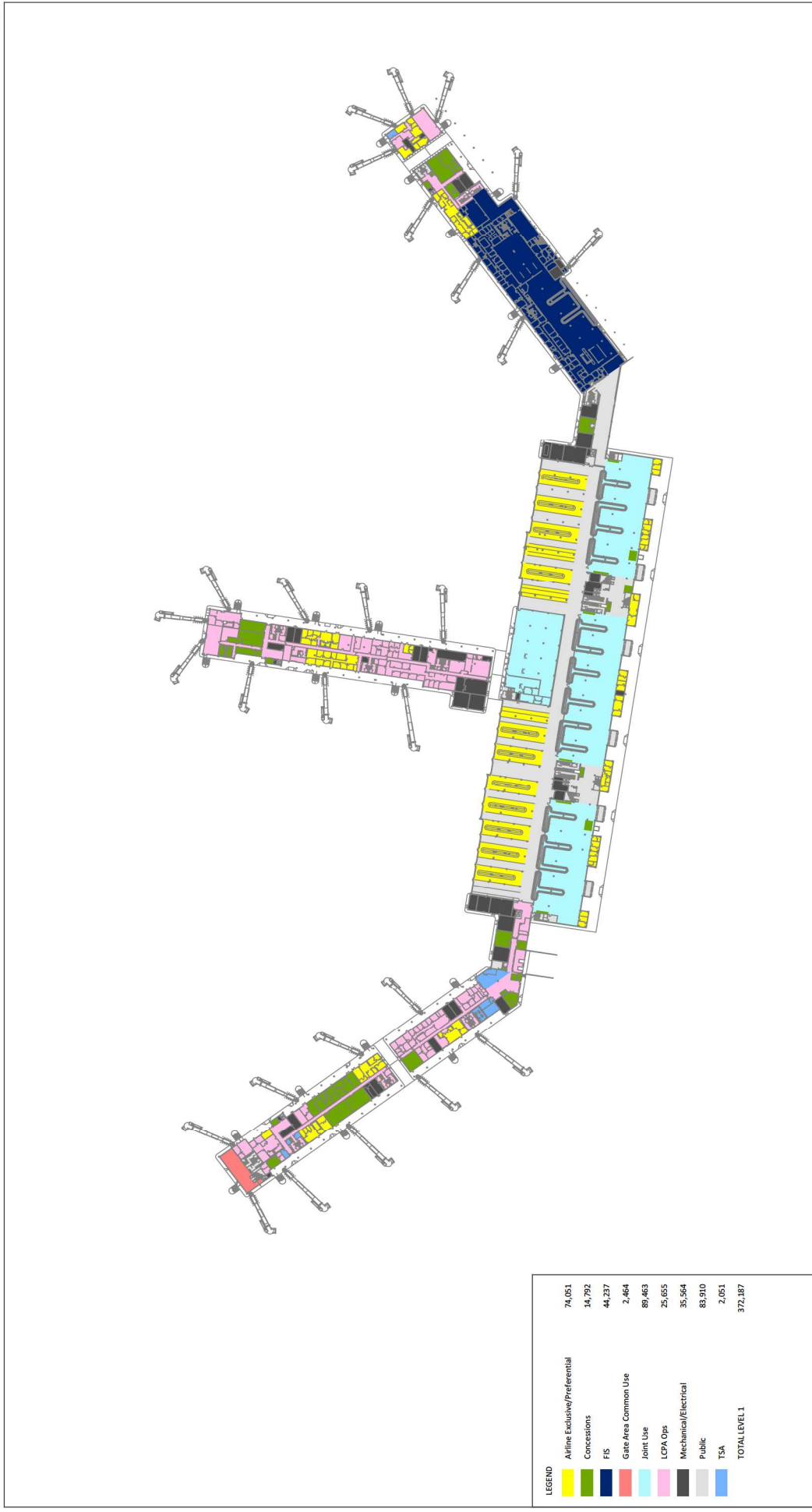
2. Indirect Cost Centers. The Indirect Cost Centers are the Cost Centers listed in Table F-10 below.

<b>Table F-10. Indirect Cost Centers</b>	
<b>Indirect Cost Center</b>	<b>Description of Department or Functional Activity</b>
Administrative	Includes, but is not limited to, Executive Director, Legal Services, Port Board, Air Service Development, Communications and Marketing, Finance, Human Resources, Purchasing, IT and Properties Departments.
Development	Development Department and contractual services related to Development.
Maintenance	Maintenance services for airport grounds, airside and landside equipment and buildings, terminal, and resources.



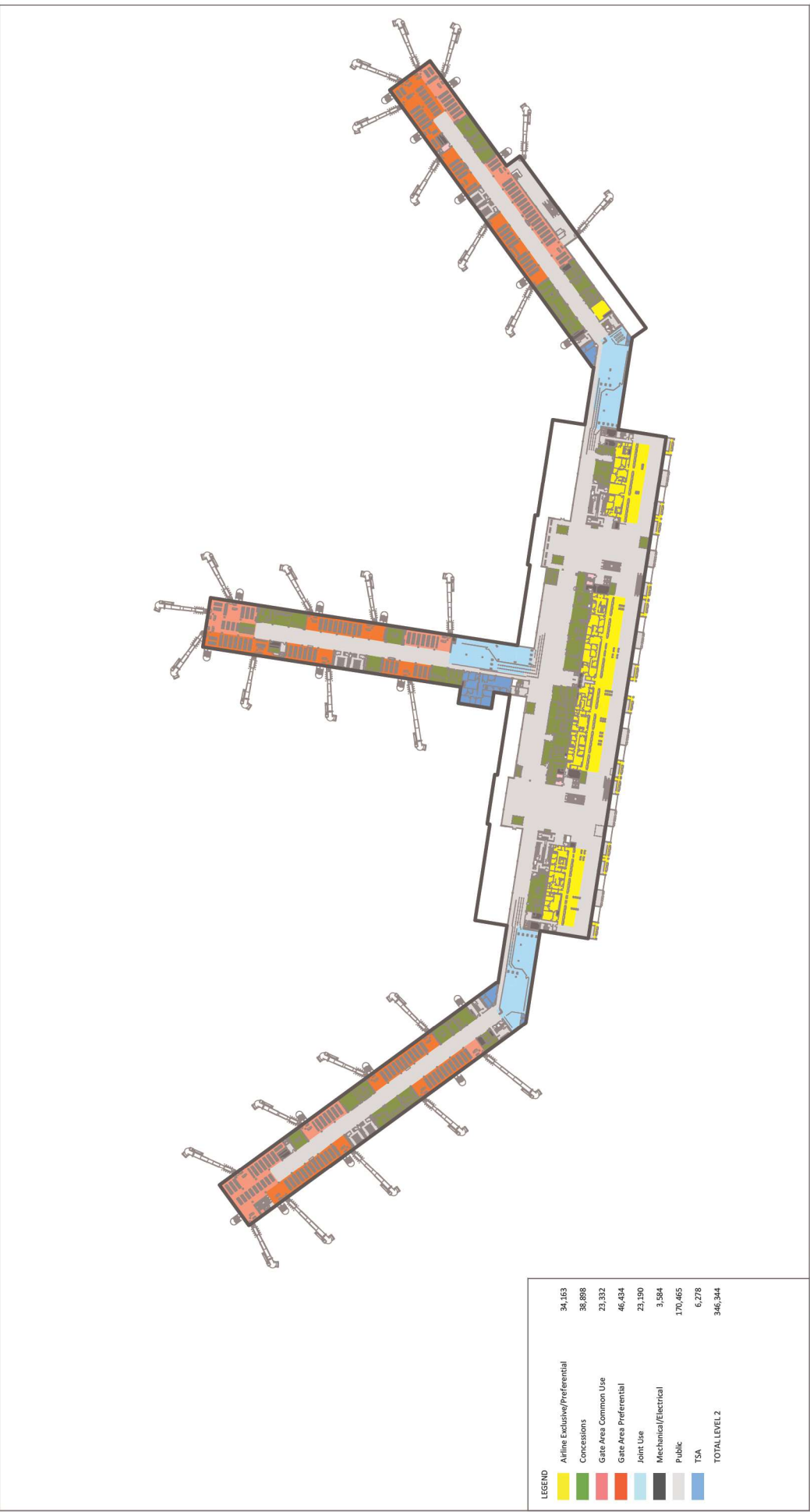
Contract Management	Prepare solicitations for and oversee outsourced services, maintenance, and support contracts.
Authority Police Department	Airport security, law enforcement, and counterterrorism.
Operations	Maintain requirements of the Airport's operating certificate issued by the FAA, oversee aircraft gate management, wildlife hazards, and general safety standards.
Aircraft Rescue and Fire Fighting	Provide twenty-four-hour aircraft fire fighting and rescue services to the Airport and Page Field.
Aviation	Oversee all aspects of the Authority's Aviation Departments, including budgetary, maintenance, standard operating practices, community involvement, and daily operations.
Aviation Security and Technology	Responsible for administering the Authority's airport security program, acting as the liaison between the Authority and the TSA, managing the Airport communications center, and managing the Airport's ID office.

3. Indirect Cost Center Allocations. Expenses for each Indirect Cost Center shall be allocated to the Direct Cost Center or (Direct Cost Centers) by the AUTHORITY in its discretion based on the estimated benefit each Direct Cost Center receives from the costs in each Indirect Cost Center. Such allocations may be reviewed and revised annually, as the AUTHORITY deems appropriate.

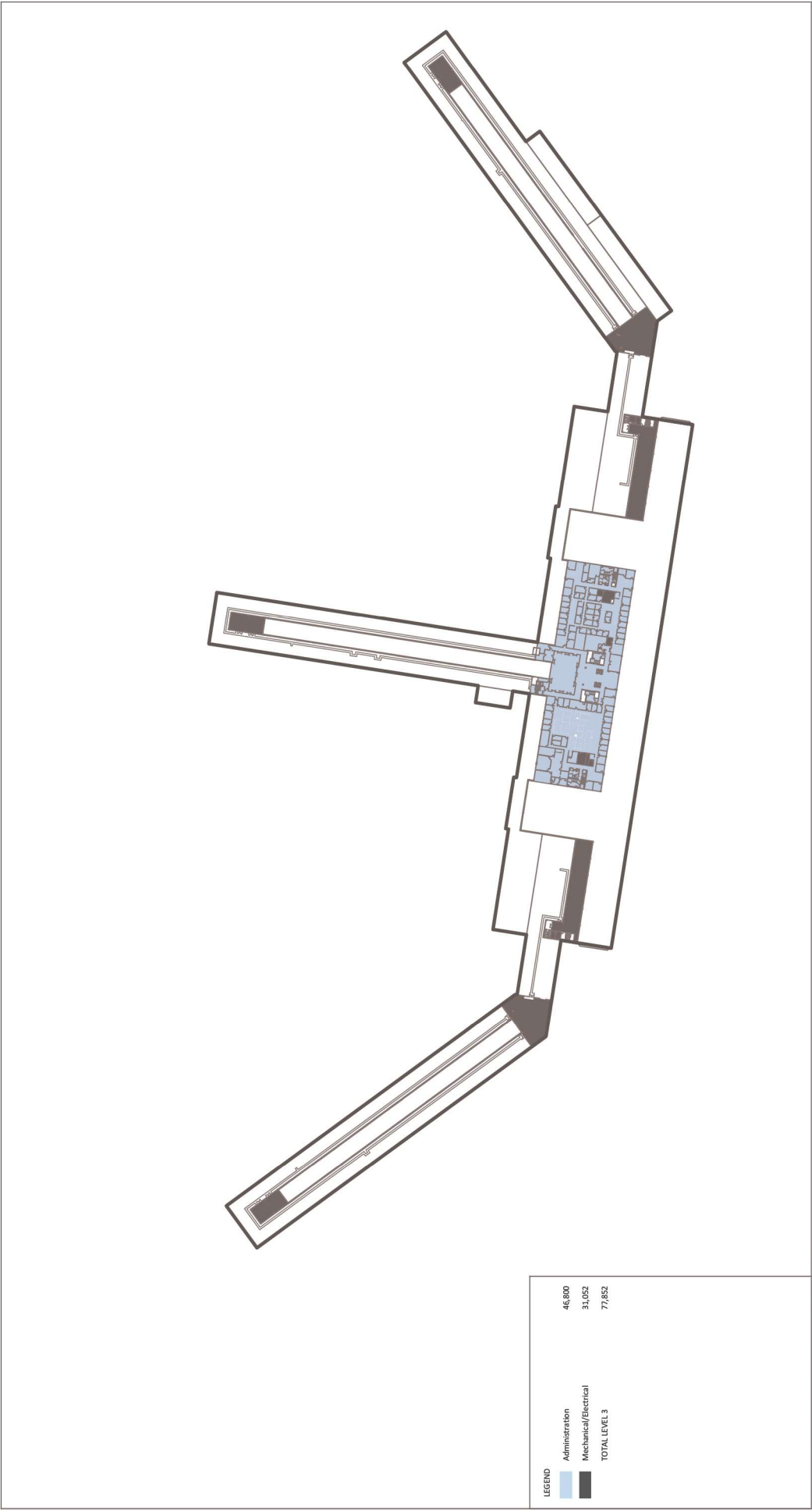


SOURCE: Lee County Port Authority; Ricordo & Associates, Inc., September 2023.









SOURCE: Lee County Port Authority, Ricordo & Associates, Inc., September 2023.



EXHIBIT G