

CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT

CARGO OPERATING AGREEMENT

This agreement (“Agreement”) is made and entered into as of _____, 20____ (“Effective Date”), by and between the City of Charlotte, a North Carolina municipal corporation (“City”) and _____, a _____ corporation (“Airline”).

Witnesseth:

WHEREAS, the City is the owner of the Charlotte Douglas International Airport (“Airport”); and

WHEREAS, Airline wishes to operate its air cargo business at, from and on the Airport.

NOW, THEREFORE, in consideration of the premises set forth above and the mutual promises set forth below, the City and Airline agree as follows:

ARTICLE 1 – DEFINITIONS AND EXHIBITS

1.1 Definitions. The following terms shall have the following meanings wherever used in this Agreement.

“Advance Schedule” shall mean means an Air Carrier’s flight schedule submitted in the form required by the City’s Airport Operations Division prior to, or on, the designated due date for participation in the forty-five (45)-day review thereof by such Division pursuant to **Exhibit C**.

“Air Carrier” shall mean a carrier certified by the Secretary of the U.S. Department of Transportation as a ‘passenger carrier’ under 49 U.S.C. § 41102 or a ‘cargo carrier’ under 49 U.S.C. § 41103.

“Airfield” shall mean those portions of the Airport that provide for the landing, takeoff and taxing of aircraft, including landing areas, runways, taxiways, adjacent field areas and related support facilities (e.g. navigation aids, hazard designation and warning devices, airfield security roads and fencing, light and clear zone areas) and all modifications, additions and expansions thereof.

“Airline” shall mean the Air Carrier executing this Agreement.

“Airport” shall mean Charlotte Douglas International Airport.

“Airport Rules and Regulations” shall mean, collectively, all rules, procedures, requirements and regulations currently effective and hereinafter amended, adopted, or established by the City, including without limitation the City’s advertising policies and guidelines which are incorporated

into and made a part of this Agreement, provided that such Airport Rules and Regulations do not conflict with applicable provisions of state or federal law or the provisions of this Agreement.

“Applicable Laws” shall mean, collectively, all applicable present and future federal, state and local laws, rules, regulations and ordinances, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health, sanitation and safety; (ii) the environment, including without limitation the Environmental Laws; (iii) access for persons with disabilities, including without limitation the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*; and (iv) airport security, including without limitation the regulations of the Transportation Security Administration, 49 CFR Parts 1540, 1542, 1544 *et seq.*

“Aviation Director” shall mean the Aviation Director of the Airport or his/her successor, or the person, division, department, bureau or agency designated by the City to exercise functions equivalent to those now exercised by the Aviation Director or his/her successor.

“City” shall mean the City of Charlotte.

“Effective Date” shall mean the date recited on page 1 of this Agreement.

“Event of Default” shall mean the occurrence of any one or more of the events described in Section 10.1 that shall constitute a breach of, and shall entitle the City to exercise its remedies under, this Agreement.

“FAA” shall mean the Federal Aviation Administration or its successor.

“Fees and Charges” shall mean, for any Fiscal Year, all fees, charges and other amounts payable by Airline for such Fiscal Year as determined and adjusted pursuant to Article 4.

“Fiscal Year” shall mean a year beginning July 1st and ending June 30th, as may be amended or changed by the City from time to time.

“Landing Fees” shall mean the fees calculated as further described in Section 4.1.

“Maximum Gross Landed Weight” or “MGLW” shall mean the maximum certificated weight, in thousand pound units, at which each aircraft operated by an Air Carrier is authorized by the FAA to land at the Airport, as certified by the aircraft’s manufacturer and recited in the Air Carrier’s flight manual governing that aircraft type.

“Monthly Activity Report” shall mean the accurate summary report prepared by Airline describing Airline’s operations at the Airport during the month preceding the month in which the summary is submitted to the City, and signed by an authorized representative of Airline certifying the accuracy of the information set forth therein, and submitted by Airline to the City in accordance with Section 4.4.

“Scheduled Airline” shall mean an Air Carrier performing scheduled passenger or operations at the Airport.

“Scheduled Operation” shall mean a Scheduled Airline’s operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any

successor publication forty-five (45) days prior to the first day of the month in which Airline's schedule would take effect, and that is also submitted to the City in an Advance Schedule as required under **Exhibit C**.

1.2 Exhibits. The following Exhibits are attached to and made a part of this Agreement:

Exhibit A: Monthly Activity Report

Exhibit B: Landing Fees and Parking Charges

ARTICLE 2 – AIRPORT USE

2.1 Right to Operate. Airline shall have the non-exclusive right to conduct its air cargo business at the Airport and to perform all operations and functions in connection with the conduct and operation of such business at the Airport, subject at all times to the terms of this Agreement and the City's exclusive control and management of the Airport. Airline shall not conduct any business or commercial operation from, at, or on the Airport that is not part of an air cargo business unless permitted under another agreement between the City and Airline. Airline shall not use the Airport, and shall not cause or permit its employees, contractors, vendors, suppliers, consultants, agents, licensees, or invitees to use the Airport for any purpose other than as specified in this Agreement or such other instrument executed between the City and Airline.

2.2 License to Use Areas of the Airport. The City grants to Airline a non-exclusive license to use the Airfield, in common with other Air Carriers, to take-off, land, fly, tax, tow maneuver, park, load and unload Airline's aircraft by such motor vehicles, ground service equipment or other equipment or conveyance as Airline may require, subject at all times to the City's exclusive control and management of the Airfield and the terms of this Agreement.

Airline specifically acknowledges and agrees that the City is permitting Airline's use of the areas described in this Section 2.2 on an "as is with all faults" basis, without any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning such areas and further agrees to assume all risk of loss, damage and injury arising out of, or alleged to have arisen out of, Airline's use of such areas. Airline's use of the areas and described in this Section 2.2 shall at all times be subject to the City's exclusive control and management, and shall comply with all Applicable Laws and Airport Rules and Regulations.

2.3 Changes in Certain Areas of the Airport. Airline acknowledges that it has no exclusive, leasehold, or priority interest in any areas or facilities in, on or at the Airport, and agrees that the City may change the Airfield at any time during the Term.

2.4 Inspections by City. The City may cause the areas used by Airline and Airline's operations at the Airport to be inspected to confirm that such areas and Airline's operations comply with the requirements of this Agreement. The City shall use reasonable efforts not to interfere with Airline's operations during any such inspection, and Airline shall cooperate with such inspection. If such inspection shows that Airline is not complying with the requirements of this Agreement, without limiting the City's rights and remedies under this

Agreement, the City reserves the right to complete these responsibilities for Airline at Airline's expense, and may require that Airline reimburse the City for the reasonable costs of such inspection in addition to the City's costs to complete said responsibilities for Airline. Airline shall promptly remedy any noncompliance shown in any such inspection.

ARTICLE 3 – TERM

This Agreement shall commence on the Effective Date, and shall continue until the earlier of (a) termination by either party upon thirty (30) days' written notice to the other party, or (b) termination by the City in accordance with Section 10.2 (the "Term").

ARTICLE 4 – FEES AND CHARGES

4.1 Landing Fees. Airline shall pay to the City a Landing Fee for each Landing at the Airport, calculated by the City at a rate expressed in dollars and cents per one thousand pounds in Maximum Gross Landed Weight. The Landing Fee as of the Effective Date is set forth in **Exhibit B**, and shall be adjusted by the City during the Term in a manner consistent with adjustments made for other similarly situated users of the Airfield. The City shall notify Airline of the Landing Fee prior to the start of each Fiscal Year.

4.2 Aircraft Parking Fees. Airline shall pay to the City aircraft parking fees associated with Airline's operation at the Airport. The parking fees as of the Effective Date are set forth in **Exhibit B**. If the parking fees are adjusted, the City shall notify Airline of the changes prior to the start of each Fiscal Year.

4.3 Other Fees and Charges. Airline shall pay to the City any other Fees and Charges related to Airline's operation at and use of the Airport that may be imposed or adjusted by the City on Airline and all other Air Carriers at the Airport.

4.4 Monthly Activity Report. Airline shall furnish to the City, on or before the tenth (10th) day of each month, a Monthly Activity Report. Airline's Monthly Activity Report shall be in a format prescribed by the City, and shall include at least the following information: (a) the aircraft make, model and series, MGLW and configuration of every aircraft type operated by Airline at the Airport during the preceding month, listing arriving and departing aircraft separately; (b) the total MGLW of all cargo aircraft landing at the Airport; (c) the total amount (in pounds or kilograms) of domestic and international cargo and mail enplaned and deplaned by Airline at the Airport; and (d) the total number of aircraft operations. A copy of the current Monthly Activity Report form (if any) is set forth in **Exhibit A**. If Airline fails to provide to the City any Monthly Activity Report in a timely manner, Airline's Landing Fee, aircraft parking fees, and any other Fees and Charges due under this Agreement shall be determined by assuming that Airline's activity in any month for which Airline has failed to report its activity equaled Airline's maximum activity during any of the previous twelve (12) months for which Airline submitted a Monthly Activity Report to the City. Any necessary adjustments in Airline's charges shall be calculated after Airline delivers to the City a Monthly Activity Report for the month in question. Resulting credits or debits shall be applied to the appropriate invoices in the next billing period.

4.5 Payment of Fees and Charges. Beginning on the Effective Date, Airline shall pay to the City, on a monthly basis, Landing Fees and aircraft parking fees calculated and invoiced by the City in accordance with this Article 4, as follows:

(a) Not later than the tenth (10th) day of each month of each Fiscal Year, Airline shall remit to the City the amount of Airline's aircraft parking fees, Landing Fees, and applicable Fees and Charges, together with Airline's Monthly Activity Report described in Section 4.4 and on which Airline's payment under this Section 4.5(a) is based; provided, however, that the City reserves the right to use in the future an automated tracking system instead of Airline's Monthly Activity Report to determine the amount of Landing Fees due from Airline; and further provided, that if the City elects to use such an automated tracking system, the City shall implement a reasonable method of reconciling the reports generated by the automated tracking system with Monthly Activity Reports submitted by Airline and resolving any discrepancies. Any payments received after the tenth (10th) day of said month shall be considered late, and shall be subject to Section 4.6.

(b) All amounts payable by Airline under this Agreement shall be paid to the City at the City's Post Office and Payment Address listed in Section 13.5, or at such other place as the Aviation Director may from time to time designate in writing. The City shall give Airline written notice of any late payments, and any amount that is not paid within fifteen (15) days of Airline's receipt of such notice shall bear interest at a rate of one and one-half (1.5%) percent per month.

4.6 City's Right to Perform. All agreements and obligations to be performed by Airline under this Agreement shall be at Airline's sole cost and expense and without any abatement of aircraft parking fees, Landing Fees, or any other Fees and Charges. If Airline shall fail to make any payment or perform any act required to be performed under this Agreement, and such failure shall continue for ten (10) business days after City's written notice thereof, the City may, but shall not be obligated to, and without waiving or releasing Airline from any of its obligations, make any such payment or perform any such act on Airline's behalf. All sums so paid by the City and all necessary, incidental costs shall be deemed additional Fees and Charges hereunder, payable to the City on demand, and the City shall have (in addition to any other right or remedy of the City) the same rights and remedies in the event of the nonpayment thereof by Airline as in the case of Airline's default in the payment of aircraft parking fees or Landing Fees.

ARTICLE 5 – INDEMNIFICATION

Except for claims for environmental matters (which are the subject of the indemnification obligation under Section 10.6), Airline shall release, defend, indemnify, and hold the City, its directors, officers, employees, agents, contractors, consultants, representatives, anyone claiming by or through any of the aforesaid and the successors and assigns of each (the City and each of the aforesaid, an "Indemnified Party") completely harmless from and against any and all claims, suits, demands, actions, liabilities, losses, damages, judgments, fines, or civil penalties arising, or alleged to have arisen, including all reasonable costs for investigation and defense thereof (including, but not limited to, reasonable attorneys' fees, court costs, and reasonable expert fees), of any nature whatsoever arising out of Airline's conduct of its air cargo business on or at the Airport, or the use of the Airport, the any areas or facilities on or at the Airport by Airline, its directors, officers, agents, employees, contractors, consultants, representatives, or anyone else for whose acts Airline is responsible, regardless of where the injury, death, or damage may have occurred, except to the extent such

injury, death, or damage is caused solely by the negligent act or omission or willful misconduct of the Indemnified Party.

ARTICLE 6 – INSURANCE

6.1 Insurance Coverages. During the Term, and for such longer periods required under this Agreement, Airline shall provide to the City and pay for and maintain, with companies reasonably satisfactory to the City, the following insurance coverages without interruption:

(a) Aircraft Liability Insurance and Aviation Liability Insurance. Aircraft Liability Insurance and Aviation Liability Insurance shall be maintained by Airline during the Term, and for such longer periods as described in Section 6.6. Coverage shall include, but not be limited to, Premises and Operations, Personal and Advertising Injury, Contractual Liability, Hangarkeepers' Legal Liability, Additional Insured endorsement (noted below), Aircraft Liability, Bodily Injury and Property Damage to Third Parties, Independent Contractors, Broad Form Property Damage, Products and Completed Operations Coverage and shall include Explosion (XCU), Collapse, Terrorism or War Risk. The limits of coverage shall not be less than (with the exception of industry standard Airline Liability sublimits):

- (i) Cargo Legal Liability with less than 60,000 lbs.: \$50,000,000
- (ii) Cargo Legal Liability with more than 60,000 lbs.: \$200,000,000

The Aircraft Liability Insurance and Aviation Liability Insurance required hereunder shall also include coverage applicable to mobile and other ground vehicle equipment operated on those parts of the Airport that are not accessible to the public and are designated as restricted areas with a limit of not less than \$25,000,000 for each occurrence, and hereafter in such increased amounts or on such revised terms and conditions as the City may from time to time specify. Mobile and other ground vehicle equipment shall include, but not be limited to, tugs, aircraft pushback tugs, provisioning trucks, belt loaders, and owned, non-owned and hired automobiles.

Airline's Aircraft Liability Insurance and Aviation Liability Insurance shall be placed with one or more companies with an AM Best rating of A- or better, and a financial size rating of IV or better (or equivalent S&P rating, or its equivalent as determined by the City). The City shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent endorsement acceptable to the City), and shall be furnished with appropriate written evidence to establish that Airline's insurance coverages required by this Subsection (a) have been met. The inclusion of the City as an additional insured shall not create any premium liability for the City. The liability insurance required by this Subsection (a) shall not contain a deductible or self-insured retention in excess of \$1,000,000 (unless otherwise approved in writing by the City). All deductibles and self-insured retentions shall be paid by Airline and assumed for the account of Airline, at Airline's sole risk. To the extent that Airline relies on excess or "umbrella" policy of insurance to satisfy the requirements of this Subsection (a), any such policy shall be no less broad than the underlying policy, shall cover the term of the underlying policy without interruption, and shall include a drop-down provision.

- (b) Automobile Liability Insurance (non-restricted areas of the Airport).

Commercial automobile liability insurance covering all owned, non-owned and hired automobiles and other mobile and other ground vehicle equipment (as defined in Subsection (a), above) operated on non-restricted areas of the Airport in the minimum single limit of \$1,000,000, and hereafter in such increased amounts or on such revised terms and conditions as the City may from time to time specify. The liability insurance required by this Subsection (b) shall not contain a deductible or self-insured retention in excess of \$1,000,000 (unless otherwise approved in writing by the City). All deductibles and self-insured retentions shall be paid by Airline and assumed for the account of Airline, at Airline's sole risk. To the extent that Airline relies on an excess or "umbrella" policy of insurance to satisfy the requirements of this Subsection (b), any such policy shall be no less broad than the underlying policy, shall cover the term of the underlying policy without interruption, and shall include a drop-down provision.

(c) Environmental Liability Insurance. Coverage shall be maintained by the Airline in an amount not less than \$10,000,000 for sudden and accidental pollution, and clean-up costs, to the extent required by Applicable Laws, arising out of Airline's activities under this Agreement, and hereafter in such increased amounts or on such revised terms and conditions as the City may from time to time specify. Airline may provide for reasonable limits of self-insurance against environmental liability risks in lieu of obtaining coverage from a third-party insurer. All amounts paid to the City by Airline on account of any self-insurance program shall be deemed insurance proceeds for purposes of this Agreement. To the extent Airline self-insures as to environmental liability, the protections afforded the City by Airline shall be the same as if insurance were provided by a third-party insurer on commonly available, commercially reasonable terms for such insurance based on Airline's activities under this Agreement, and Airline shall have all the obligations and liabilities of a third-party insurer hereunder (*e.g.*, obligation to provide a defense for covered claims).

(d) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance as required by Applicable Laws, and employers' liability insurance with minimum limits of \$100,000 per accident, \$500,000 disease per policy, \$100,000 disease per policy. Airline shall require all of its contractors and consultants to carry workers' compensation insurance as required by Applicable Laws.

(e) Other Insurance. Airline shall also obtain all other forms of insurance required for its particular use of the Airport, and as required under Applicable Laws or Airport Rules and Regulations.

7.2 Termination, Renewal and Additional Insurance. Airline shall use commercially reasonable efforts to ensure that no policy of insurance required of Airline under this Agreement shall be cancellable or subject to non-renewal or adverse, material modification except after thirty (30) days' prior written notice to the City. Airline shall, in a timely manner prior to the expiration, cancellation, non-renewal or modification of such policies, furnish the City with evidence of renewals or insurance binders that evidence the renewal thereof. In the event of cancellation of any insurance required of the Airline at any time during the Term, or any change not reasonably acceptable to the City, including an erosion in available limits below those specified in this Article 6, the City reserves the right, after consultation with Airline, to provide additional insurance and charge the cost of any premiums for such coverage to Airline. The City's right under this Section 6.2 includes, but is not limited to, the City's right to purchase higher limits for its own insurance program to account for an erosion

in Airline's limits.

6.3 No Representation of Adequacy. The City makes no representation that the limits or forms of insurance coverage specified or required under this Agreement are adequate to cover Airline's property or Airline's liabilities or obligations under this Agreement.

6.4 City's Right to Request Information from Airline's Insurance Company. If the City requests a written statement from Airline's insurance company regarding any impairments to Airline's aggregate limit(s), Airline shall promptly authorize and have delivered such statement to the City. Airline authorizes the City and its insurance consultant to confirm with Airline's insurance agents and brokers all information furnished to the City regarding Airline's compliance with the insurance requirements under this Agreement.

6.5 Primary Coverage. All insurance policies required of Airline under this Agreement shall be endorsed to state that Airline's policy is primary and not contributory with any insurance carried by the City.

6.6 Duration of Insurance Obligations. Airline shall maintain its aircraft liability insurance, aviation liability insurance and automobile liability insurance under this Article 6 in force and effect at all times during the Term, and for a period of two (2) years after the expiration or earlier termination of this Agreement. Any insurance coverage that is written on a claims-made basis must remain in force for two (2) years after the expiration or earlier termination of this Agreement.

6.7 Amounts of Coverage. All requested insurance limit amounts must be in U.S. dollars.

6.8 Waiver of Subrogation. The City and Airline (for themselves and on behalf of anyone claiming through or under them by way of subrogation or otherwise) hereby release each other from liability and waive all right of recovery against each other for any loss to real or personal property located anywhere on or about the Airport from perils which can be insured against under a standard form commercial property or fire insurance policy with extended perils coverage endorsements generally available in North Carolina at the time the loss occurs. The effect of the release and waiver of the right to recover damages shall not be limited by whether the party incurring the loss has actually obtained such insurance, by the amount of insurance carried, or by any deductibles applicable thereto. If a party's applicable insurance policies do not allow the insured to waive the insurer's right to recovery, the party shall cause each insurance policy to be endorsed to allow the waiver of subrogation required by this Article 6.

6.9 Increase in Cost of Insurance. Airline shall not use the Airport or any areas or facilities on or at the Airport in any manner not contemplated by this Agreement so as to increase the existing rates of insurance applicable to the Airport any areas or facilities on or at the Airport. If Airline shall do so, then, at the City's option, the full amount of any resulting increase in premiums paid by the City, and to the extent allocable to the Term, shall be paid by Airline to the City.

6.10 Surviving Obligations. Airline's obligations under this Article 6 shall survive expiration or earlier termination of this Agreement.

ARTICLE 7 – ASSIGNMENT AND SUBLETTING

Airline shall not assign or transfer this Agreement or any right or interest herein or hereunder without first obtaining the City's prior written consent, which consent may be withheld in the sole discretion of the City.

ARTICLE 8 – MAINTENANCE AND REPAIR

8.1 Airline's Obligations. Airline shall keep all areas and facilities that Airline uses or occupies on or at the Airport clean at all times during and after its use and occupancy thereof. If Airline does not keep such areas and facilities properly clean, in the reasonable opinion of the City, Airline will be so advised and shall take immediate corrective action. Airline shall promptly remove from the areas and facilities that Airline uses or occupies on or at the Airport all garbage, trash and refuse, and shall store and dispose of it only in the manner approved by the City.

8.2 No Alterations; No Signs. Airline shall not alter any area or facility on or at the Airport in any way whatsoever, nor erect any signs in, at or on any part of the Airport, nor permit any advertising of any nature in, at or on any part of the Airport.

ARTICLE 9 – ENVIRONMENTAL MATTERS

9.1 Definitions. For purposes of this Article 9, the following terms shall have the following meanings:

(a) "Environmental Law" means any applicable state or federal law, regulation, ordinance, permit or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect, that pertains to the environment.

(b) "Hazardous Substances" means any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant by any Environmental Law.

(c) "Release" means any spilling, leaking, pumping, pouring, emitting, discharging, leaching, dumping or disposing into or on any property or the environment. Petroleum spills of less than five (5) gallons are excluded unless water or soil is impacted.

9.2 Restriction on Hazardous Substances. Airline shall not allow (a) any Release by Airline (or its agents or invitees) on the Airport of any Hazardous Substances in violation of any Environmental Law, or (b) any Hazardous Substances Released by Airline (or its agents or invitees) to migrate off the Airport or into surface waters, soils, underground waters, or air adjacent to the Airport in violation of any Environmental Law; provided, however, that Airline shall not be liable for any pre-existing Hazardous Substances contamination that Airline can demonstrate was not caused by Airline (or its agents or invitees). Upon the City's reasonable written request, Airline shall provide to the City Airline's USEPA Waste Generator Number unless Airline is a Conditionally Exempt Quantity Generator (CESQG). Airline shall promptly notify the City in writing when Airline becomes aware of: (1) any Release of any Hazardous Substances by Airline (or its agents or invitees) at, on, or from the Airport, or the occurrence of any other environmental problem or liability affecting the Airport; (2) any notice given to

Airline by any third party regarding any Release or threat of Release of any Hazardous Substances at, on, or from the Airport, or (3) the commencement of any litigation against Airline or any notice given to Airline of threat of litigation relating to any alleged unauthorized Release of any Hazardous Substances or other environmental contamination, liability, or problem relating to Airline's operations at the Airport.

9.3 Compliance and Remediation. Airline shall at all times conduct its business at the Airport in compliance with all applicable Environmental Laws. If Airline is in violation of any Environmental Law concerning the presence, use, Release or threat of Release of Hazardous Substances or any other Environmental Laws (whether or not pertaining to Hazardous Substances) arising out of Airline's operations at the Airport, Airline shall promptly take such action as is reasonably necessary to remedy and cure the violation. Any remediation and cure that Airline conducts pursuant to this Section 9.3 shall be at Airline's sole cost and expense, and to standards required by applicable Environmental Laws and consistent with the use of the property for airport purposes as reasonably determined by the City; provided, however if a future development project anticipated for the property would result in a change in the standards applicable to the remediation by Airline under this Section 9.3, the City shall notify Airline in writing at the time said future development project is proposed publicly.

9.4 City Remedies. If, during the Term, Airline violates any Environmental Law at, on, or from the Airport, and Airline does not act promptly to take such action as is reasonably necessary to remedy and cure the violation, the City has the right, but not the obligation, after providing written notice to Airline as provided herein, to take such action as is reasonably necessary to remedy and cure the violation. If the City has a reasonable belief that Airline's actions or inactions present a threat of violation or a threat of damage to any areas or facilities of the Airport used by Airline, or to the Airport generally, the City has the right, but not the obligation, to take such corrective or mitigating action as the City deems reasonably necessary. Prior to taking any such actions under this Section 9.4, and provided that the violation, threat of violation, or threat of damage does not require immediate action pursuant to applicable Environmental Laws, or to avoid disruption to Airport operations, the City shall first provide written notice to Airline of such violation or threat, and thirty (30) days within which Airline may demonstrate why no such violation or threat is present, or to timely remedy (or begin to remedy and diligently prosecute to completion, if such remedy reasonably requires more than thirty (30) days to complete) such violation or threat that may be present. If Airline fails to remedy or begin to remedy such violation or threat within such thirty (30) day period, the City may take such actions as are reasonable and necessary under this Section 10.4. All reasonable costs and expenses incurred by the City arising out of Airline's violation of any Environmental Law, or Airline's actions or inactions described under this Section 9.4, shall become due and payable by Airline thirty (30) days after the City's presentation of an invoice to Airline.

9.5 Environmental Testing; Surrender and Delivery. In addition to the City's rights under Section 2.4, the City shall have the right to conduct environmental testing at, in and on all areas and facilities that Airline uses or occupies at the Airport under this Agreement. Airline shall have the right to obtain the results of such testing and split samples at no additional cost to the City. Prior to surrendering and delivering to the City all areas and facilities that Airline uses or occupies on or at the Airport, and in addition to the requirements under Section 10.3, Airline shall remove or remediate, in accordance with and to the extent required under applicable Environmental Laws and the clean-up standards described in Section 9.3, Hazardous Substances placed or Released on or at such areas and facilities by Airline (or its agents or invitees), and shall demonstrate to the City's reasonable satisfaction

that such removal or remediation has been completed as required under this Section 9.5. The removal, remediation and demonstration described in this Section 9.5 shall be a condition precedent to the City's return of any portion of the Security Deposit to Airline upon expiration or earlier termination of this Agreement.

9.6 Environmental Indemnity. Except for Excluded Environmental Claims (as hereinafter defined) and claims for other than environmental matters (which are the subject of the indemnification obligation under Article V, Airline agrees to release, defend, indemnify and hold the City, its directors, officers, employees, agents, contractors, consultants, representatives, anyone claiming by or through any of the aforesaid, harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation clean-up or other remedial costs (and including actually incurred reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substances on or at the Airport, or the Release of any Hazardous Substances from the Airport to other properties or into the surrounding environment, or from any other violation of Environmental Laws, whether made, commenced or incurred before the Term, or during the Term, or on or after the expiration or earlier termination of this Agreement, which arise out of Airline's actions at, on, or from the Airport before the Term, during the Term, or on or after the expiration or earlier termination of this Agreement. For purposes of this Section 9.6, "Excluded Environmental Claims" shall mean, any claims, causes of action, demands, liabilities, fines, penalties, costs, expenses or any other liabilities, to the extent caused by (A) the migration of Hazardous Substances not first Released during the Term, or on or after the expiration or earlier termination of this Agreement, provided that Airline is not otherwise responsible for such Release at any time; (B) the movement of Hazardous Substances first Released outside the Airport onto or under the Airport due to leaching or the flow of groundwater, provided that Airline is not otherwise responsible for the off-Airport Release that introduced the migrating Hazardous Substances into the environment; (C) the Release or presence of Hazardous Substances upon, about, beneath or affecting all or any portion of the Airport or any off-Airport areas, to the extent Airline can demonstrate that such Release or presence of Hazardous Substances existed as of the Effective Date or was caused by the City or any third party; and (D) the negligent act or omission or willful misconduct of the City. The indemnification and other obligations under this Section 9.6 shall survive expiration or earlier termination of this Agreement.

ARTICLE 10 – DEFAULT AND TERMINATION; SURRENDER

10.1 Airline Default. The occurrence of any one or more of the following events shall constitute a breach of this Agreement and an Event of Default under this Agreement:

(a) Airline shall fail duly and timely to pay any Landing Fees, aircraft parking fees, or any other fee or charge due under this Agreement when due to the City, and such failure shall continue for five (5) days beyond Airline's receipt of a written notice of such breach or default from the Aviation Director. Notwithstanding the foregoing, if there occur two (2) defaults in the payment of Landing Fees, aircraft parking fees, or other fee or charge due under this Agreement in any twelve (12) month period, thereafter Airline shall not be entitled to, and the City shall have no obligation to give, notice of any further payment defaults (*i.e.*, thereafter Airline's failure to pay Landing Fees, aircraft parking fees, and other fee or charge due under this Agreement in a timely manner shall be

deemed an Event of Default).

(b) Airline shall become insolvent, take the benefit of any present or future insolvency statute, make a general assignment for the benefit of creditors, file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property, or petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute shall be filed against Airline and shall not be dismissed within ninety (90) days after the filing thereof.

(c) There shall occur an assignment or transfer subject to Article 7 without the City's prior written consent.

(d) Airline shall abandon the conduct of business at the Airport, and, in this connection, suspension of operations for a period of sixty (60) days shall be considered abandonment in the absence of a labor dispute or other governmental action in which Airline is directly involved.

(e) Any lien or attachment shall be filed as a result of an act or omission of Airline, and shall not be discharged within sixty (60) days after Airline's receipt of notice.

(f) Airline shall fail to obtain and maintain the insurance required by Article 7, or provide copies of the policies or certificates (including without limitation those related to renewals of such coverages) to the City as required.

(g) Airline shall fail to keep, perform and observe each and every agreement set forth in this Agreement, and such failure shall continue for a period of more than five (5) days after the Aviation Director's delivery of written notice of such failure, or, if satisfaction of such obligation requires activity over a period of time, if Airline fails to commence the cure of such failure within five (5) days after Airline's receipt of such notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within sixty (60) days of the Aviation Director's delivery of such notice.

10.2 City's Remedies. Whenever any default shall occur (other than a default pursuant to Section 10.1(c) upon which termination of this Agreement, at the City's option, shall be effective immediately without further notice), this Agreement and all of Airline's rights hereunder shall terminate if the written notice of default so provides. In the event of any termination of this Agreement by the City, all of Airline's rights, powers and privileges under this Agreement shall cease, and Airline shall immediately surrender to the City, in accordance

with Section 10.3, all portions of the Airport that Airline uses or occupies under this Agreement at its sole cost and expense, and shall remain liable to the City for any damage to any areas or facilities on or at the Airport arising out of or related to Airline's removal activities. Airline shall have no claim of any kind whatsoever against the City by reason of such termination, or by reason of any act by the City. The City's action pursuant to this Section 10.2 shall not in any way limit the City in the pursuit of any other additional right or remedy available to the City in law or in equity by reason of Airline's default.

10.3 Surrender. In addition to the requirements set forth in Section 9.5, Airline covenants and agrees to surrender and deliver to the City all areas and facilities that Airline uses or occupies on or at the Airport upon expiration or earlier termination of this Agreement in as good condition as on the Effective Date (or in the case of improvements or alterations made or fixtures installed subsequent thereto, then as of the date of such improvements, alterations, or fixtures were made or installed), reasonable wear and tear, and damage from casualty that is not due to Airline excepted. If, upon such expiration or earlier termination, Airline shall fail to remove any personal property on or before the date of termination, the City may following written notice, but without the obligation to do so, remove said personal property and hold them for the owners thereof, or may place the same in a public warehouse, all at the expense and risk of the owners thereof. Airline shall reimburse the City for any reasonable expense incurred by the City in connection with such removal and storage. In addition, the City shall have the right, but not the obligation, to dispose of such property as waste, or sell such stored property and the proceeds of such sale shall be applied; first, to the cost of the sale; second, to the payment of charges for storage and removal; third, to the payment of Fees and Charges or any other obligation that may then be due from Airline to the City; and the remaining balance, if any, shall be paid to the City. If the expenses of such removal, storage, disposal and sale shall exceed the proceeds of sale, Airline shall pay such excess to the City upon demand. Airline shall indemnify, defend, release and hold harmless the City from any and all damage, cost and expenses related to said removal, storage, disposal and sale, which obligations shall survive expiration or earlier termination of this Agreement.

ARTICLE 11 – NON-DISCRIMINATION AND AFFIRMATIVE ACTION

11.1 Non-Discrimination. Airline acknowledges that the City has given to the United States of America, acting by and through the FAA, certain assurances with respect to non-discrimination required by Title VI of the Civil Rights Act 1964 (42 U.S.C. § 2000d *et seq.*, 78 Stat. 252), 49 CFR Part 21, 49 CFR § 47123, 28 CFR § 50.3 and other acts and regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (“DOT”) (collectively, and including all amendments thereto, the “Acts and Regulations”) as a condition precedent to receiving Federal financial assistance from FAA for certain Airport programs and activities. The City is required under the Acts and Regulations to include in this Agreement, and Airline agrees to be bound by, the following covenants and requirements:

- (a) Airline, for itself, its assignees and successors in interest, covenants and agrees that it shall assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any program or activity conducted with or benefitting from Federal financial assistance received by the

City from the FAA. In the event of Airline's breach of any of the above Nondiscrimination covenants, the City shall have the right to terminate this Agreement.

(b) Airline, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated at the Airport for a purpose for which a DOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations such that no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities.

(c) In the event of Airline's breach of any of the Non-discrimination covenants described in subsection (b), above, the City shall have the right to terminate this Agreement, and to enter, re-enter and repossess the areas and facilities used by Airline at the Airport, and hold the same as if this Agreement had never been made or issued. This subparagraph (c) shall not become effective until the procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

(d) Airline, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, hereby covenants and agrees, as a covenant running with the land, that (i) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (ii) 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 shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (iii) Airline shall use the all areas and facilities on or at the Airport in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

(e) In the event of Airline's breach of any of the Non-discrimination covenants described in subsection (d), above, the City shall have the right to terminate this Agreement, and to enter or re-enter and repossess the areas and facilities used by Airline at the Airport, and hold the same as if this Agreement had never been made or issued. This subparagraph (e) shall not become effective until the applicable procedures of 49 CFR Part 21 are followed and completed, including the expiration of appeal rights.

(f) Airline shall include these subsections (a) through (f), inclusive, in Airline's licenses, permits and other instruments relating to the areas and facilities used by Airline at the Airport, and shall require that its licensees, permittees and others similarly include these statements in their licenses, permits and other instruments relating to the areas and facilities used by Airline at the Airport.

11.2 Affirmative Action. Airline assures that: (a) it shall undertake an affirmative action program as required by the City, and by all federal and state laws, rules and regulations pertaining to civil rights (and any and all amendments thereto), including, without limitation, 49 CFR Part 21 and 49 U.S.C. § 47123, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the

benefits of the program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted with or benefitting from Federal financial assistance received by the City from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section 11.2 in Airline's contracts and other applicable documents under this Agreement, and shall require that its contractors and others similarly include these statements in their subcontracts and applicable documents.

ARTICLE 12 - SECURITY DEPOSIT

If, at any time during the Term, Airline shall commit an Event of Default that is not fully cured in accordance with the applicable provisions of this Agreement, the City shall have the right to immediately impose the security deposit requirements of this Article 12 ("Security Deposit"), and shall provide Airline with written notice thereof. In such event, Airline shall obtain and deliver to the City's Post Office and Payment Address set forth in Section 13.5, a Security Deposit equal to three (3) months of Landing Fees and aircraft parking fees as estimated by the City to secure Airline's obligations under this Agreement. The amount of the Security Deposit may be adjusted from time to time by the City to reflect changes in Airline's financial obligations to the City under this Agreement. The amount, form, provisions and nature of the Security Deposit, including if appropriate the identity of the surety or other obligor thereunder, shall at all times be subject to the City's approval. The Security Deposit shall be made by letter of credit, surety bond or other instrument acceptable to the City no later than thirty (30) calendar days after

Airline's receipt of the City's written notice imposing the Security Deposit requirement, and shall remain in place at all times throughout the Term. The City shall not pay interest on the Security Deposit, and the City shall not be required to keep the Security Deposit separate from its other accounts. No trust relationship is created with respect to the Security Deposit. Airline shall maintain such Security Deposit for the remainder of the Term. If Airline's Security Deposit is in the form of a letter of credit, and unless said letter of credit is automatically renewing, Airline shall, at least thirty (30) days prior to the maturity date of the letter of credit (or any replacement letter of credit) then held by the City, deliver to the City a replacement letter of credit that has a maturity date no earlier than the next anniversary of the Effective Date or one (1) year from its date of delivery to the City, whichever is later.

The City may apply all or part of the Security Deposit to any unpaid sums due under this Agreement or to cure the existing or other Events of Default. If the City depletes the Security Deposit in this way, Airline shall restore the Security Deposit within ten (10) business days after the Airline's receipt of the City's written request to do so. Notwithstanding the foregoing, if the City depletes the Security Deposit and any unpaid sum remains due under this Agreement, the City shall have the right to recover the total of such unpaid sum through the fees and charges mechanism set forth in Section 4.6; provided, however, that this shall not release nor in any way affect Airline's liability for such unpaid sums.

If there is no Event of Default and no event which, with the passage of time or the giving of notice, would constitute an Event of Default, for one (1) year after Airline's delivery of the Security Deposit to the City or Airline's complete cure of an immediately preceding Event of

Default, whichever date is later, and further provided that there is no material adverse change in Airline's net worth on that date, as verified by the City based upon a certificate from Airline's chief financial officer and audited financials, then the remaining proceeds of the cash Security Deposit or the letter of credit, as applicable, shall be returned to Airline within thirty (30) days after such date; provided, however, that the City shall have the right to impose the Security Deposit requirements of this Article 12 on Airline if Airline subsequently commits an Event of Default that is not fully cured in accordance with the applicable provisions of this Agreement.

Should Airline comply with all of the terms, covenants and conditions of this Agreement and promptly pay all sums payable by Airline to the City hereunder, the Security Deposit or the remaining proceeds therefrom, as applicable, shall be returned to Airline within thirty (30) days after the expiration of the Term, less any portion thereof that may have been used by the City to cure an Event of Default. The City's rights under this Article 12 shall be in addition to all other rights and remedies provided to the City under this Agreement or by Applicable Laws.

ARTICLE 13 –GENERAL PROVISIONS

13.1 Compliance with Laws. Airline shall comply with all Applicable Laws and Airport Rules and Regulations. Airline shall also obtain and pay for all licenses, certificates, permits and other authorizations that are now or hereafter required by Applicable Laws or the Airport Rules and Regulations for Airline's operations at the Airport, Airline's use of the areas or facilities on or at the Airport, and Airline's exercise of any rights under this Agreement.

13.2 Airline Representative. At any time that Airline is operating at the Airport, Airline must have a badged representative present on the Airport. This individual shall be responsible for ensuring Airline operations and Airline personnel are in compliance with the terms of this Agreement.

13.3 Audit. Airline shall maintain separate and accurate daily records of Airline's operations at the Airport for a period of three (3) years after the close of each Fiscal Year throughout the Term. This record-keeping obligation shall survive the expiration or earlier termination of this Agreement. All such books and records shall be kept in accordance with generally accepted accounting principles, consistently applied, showing in detail all business done or transacted in, on, about, from or pertaining to the Airport, and shall be sufficient to permit the City to calculate and verify the Landing Fees, aircraft parking fees and other fees and charges due under this Agreement. Upon the City's written request, Airline shall make available to the City or its auditors any and all books, records and accounts pertaining to its operations under this Agreement. If the requested books, records and accounts are not made available at the Airport, and the City or its auditors are required to travel elsewhere to review them, the City may require that Airline reimburse the City for the reasonable costs of such review of Airline's books, records and accounts, provided that the City demonstrates an underpayment of five percent (5%) or more.

13.4 Authorized Representatives. Whenever in this Agreement, Airline is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the City, Airline shall deal with the City's authorized representative; and unless or until the City shall give Airline written notice to the contrary, the City's authorized representative shall be the Aviation Director. Whenever in this Agreement, the City is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with Airline, the City shall deal with Airline's

authorized representative; and unless or until Airline shall give the City written notice to the contrary, Airline’s authorized representative shall be the individual first listed in Section 13.5.

13.5 Notices. All notices and payments under this Agreement may be delivered or mailed. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received at the street addresses listed below. If mailed, they shall be sent to the City’s overnight delivery and street address and Airline’s overnight delivery and street address as provided below, respectively, or to such other respective addresses as either party may from time to time designate to the other party in writing. All notices and payments mailed by regular mail (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the Postal Service shall be conclusive evidence of the date of mailing.

Operational Contact (Local)	
For The Company:	For The City:
	Charlotte Douglas International Airport
	Attn: Christopher C. Garnett
	5601 Wilkinson Boulevard
	Charlotte, NC 28208
	Phone: 704.359.4480
	Fax: 704.359.4030
	E-mail: chris.garnett@cltairport.com
Legal Contact	
For The Company:	For The City:
	Charlotte Douglas International Airport
	Attn: Leila Lahbabi
	5601 Wilkinson Boulevard
	Charlotte, NC 28208
	E-mail: lzahbabi@cltairport.com
Billing Contact	
For The Company:	For The City:
	Charlotte Douglas International Airport
	Attn: Elane Hill
	5601 Wilkinson Boulevard
	Charlotte, NC 28208
	Phone: 704.359.4843
	E-mail: dehill@cltairport.com

13.6 No Personal Liability. No director, officer, agent, employee, or elected official of either party shall be charged personally or contractually liable by or to the other party under any

term or provision of this Agreement, or because of any breach of this Agreement, or because of their execution or attempted execution of this Agreement.

13.7 Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of, the State of North Carolina. Airline and the City expressly agree that, if either party brings suit against the other, venue shall be exclusively vested in the state courts of Mecklenburg County, or if federal jurisdiction is appropriate, exclusively in the United States District Court for the Western District of North Carolina.

13.8 No Waiver. No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed or operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party.

13.9 No Exclusive Remedy. No remedy provided by this Agreement shall be deemed to be exclusive.

13.10 SEC Rule 15c2-12. To the extent applicable, Airline, upon the City's request, shall provide to the City such information as the City may reasonably request in writing to comply with the City's continuing disclosure requirements under SEC Rule 15c2-12, as it may be amended from time to time, provided, however, that Airline may, in lieu of providing the requested information, direct the City to an Airline or SEC website where the requested information is then currently available.

13.11 Force Majeure. If either party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor disputes (all of which shall be subject to Section 13.23), inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty, or other reason of a similar nature beyond the reasonable control of the party delayed in performing work or doing acts required under this Agreement, performance of such act shall be excused for the period of the actual delay attributable to such causes, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay is herein referred to as an "Unavoidable Delay"). This Section 13.11 shall not be applicable to Airline's obligations to procure insurance, or to pay Airline's Fees and Charges, or to pay any other fees, charges, sums, moneys, costs, or expenses required to be paid by Airline under this Agreement or otherwise. If any provision of this Agreement negates or limits the period of any force majeure or Unavoidable Delay extension, such provision shall override this Section 13.11. Airline shall give the City notice of any Unavoidable Delay within a reasonable time (not to exceed one (1) year) following the occurrence of the delaying event.

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

13.13 Headings. The headings of the several sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or

intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions, or the interpretation or construction, of this Agreement.

13.14 Withholding Required Approvals. Except as specifically provided otherwise in this Agreement, whenever the approval or consent of the City or Airline is required by this Agreement, no such approval or consent shall be unreasonably refused, withheld, or delayed.

13.15 Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of each party to this Agreement.

13.16 Exhibits. All exhibits referred to in this Agreement and which may, from time to time, be referred to in any duly executed amendment to this Agreement are (and with respect to future amendments, shall be) by such reference incorporated into this Agreement and deemed a part of this Agreement as fully as if set forth within it.

13.17 Entire Agreement. The parties intend that this Agreement shall constitute the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever (including prior drafts of the Agreement) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

13.18 Amendments. Except as specifically provided herein, neither this Agreement, nor any of its terms or provisions, may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought.

13.19 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement other than as specifically provided in Section 5.1, Section 5.2 and Section 9.6.

13.20 No Joint Venture. It is expressly agreed that the City and Airline are not, in any way or for any purpose, partners and, therefore, do not assume any responsibilities for one another.

13.21 Attorneys' Fees. If either party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and if that one party shall substantially prevail in such action, the losing party shall pay all of the prevailing party's reasonable costs and reasonable attorneys' fees as determined by the court. If the City or Airline is represented by in-house attorneys in such action, such attorneys' fees shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Charlotte, North Carolina; provided, however, that Airline shall only be required to pay to the City the difference between the total attorneys' fees owed by Airline and the amount direct billed to the City by its in-house counsel.

13.22 Liens and Encumbrances. Airline shall keep the Airport free and clear of any liens and encumbrances arising or growing out of Airline's use and occupancy of or activities at the Airport. Airline agrees to fully indemnify, defend and hold the City harmless in connection with any such liens and encumbrances filed against the Airport. At the City's request, Airline shall provide to the City written proof of payment of any item that would or might constitute the basis for such a lien or encumbrance if not paid. The indemnification and other obligations under this Section 13.22 shall survive expiration or earlier termination of this Agreement.

13.23 Labor Disputes. Airline agrees to use reasonable efforts to avoid disruption to the City, its tenants, or members of the public arising from labor disputes involving Airline, and in the event of a strike, picketing, demonstration or other labor difficulty involving Airline, to use its good offices, including the utilization of available legal remedies, to minimize or eliminate any disruption to the City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

13.24 Taxes. Airline shall also pay all taxes, assessments, and charges which during the Term of this Agreement may become a lien or which may be levied by City, state, or any other tax levying body, upon Airline by reason of its use of the Airport, or otherwise, as well as taxes, assessments, and/or charges on property owned by Airline in or about the Airport. Airline shall reimburse the City for all such taxes paid or payable by the City. With respect to any such taxes payable by the City that are levied on, or measured by, the Fees and Charges or any other fees or charges payable under this Agreement, Airline shall pay to the City with each payment an amount equal to the tax levied on, or measured by, that particular payment. However in no case, Airline shall be responsible for any taxes based upon City's net or gross income receipts, excess profit or net worth (including any interest and penalties thereon). All other tax amounts for which the City is or will be entitled to reimbursement from Airline shall be payable by Airline to the City at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided that Airline shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by Airline. Airline may contest, in its own name or the name of the City, the validity or amount of any tax it shall be required to pay to a taxing entity; provided, however, that Airline shall defend, indemnify and hold the City harmless from all liability and expense arising from such contest, which obligations shall survive expiration or earlier termination of this Agreement and shall provide security satisfactory to the City for its performance of such indemnification obligation. Airline shall not permit a lien or encumbrance to attach to the Airport or any property owned by Airline in or about the Airport by reason of any failure to pay taxes.

13.26 Subordination to Sponsor's Assurance Agreement. This Agreement shall be subordinate and subject to the terms of any "Sponsor's Grant Assurances" or like agreement that has been or may be furnished to the FAA by the City to the United States of America, its boards, commissions, or agencies, including without limitation the FAA, or required by Applicable Laws, as a condition precedent to receiving Federal financial assistance for development of the Airport and other Airport programs and activities.

13.27 Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United States, the execution of which is required to enable or permit the transfer of rights or property to the City for airport purposes, or the expenditure of federal grant funds for Airport improvement, maintenance or development. Airline shall reasonably abide by the requirements of agreements entered into between the City and the United States, and shall consent to amendments and modifications of this Agreement if required by such agreements or if required as a condition of the City's entry into such agreements.

13.28 No Exclusive Rights. Nothing contained in this Agreement shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) with respect to activity on the Airport.

13.30 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original copy of this Agreement and, when taken together, shall be deemed to be one and the same Agreement.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

CITY OF CHARLOTTE

A Municipal Corporation

By: _____

Brent Cagle, Aviation Director

Date: _____

A _____ Corporation

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Monthly Activity Report Form

[form, if any, to be provided by City]

EXHIBIT B

Landing Fees and Aircraft Parking Fee

- Landing Fee \$ 0.89 per 1,000 pounds MGLW
- Aircraft Parking Fee 0-3 Hrs. \$50 and 3-24 Hrs. \$100

