

CNH JULY 5, 2021
NOT A CONTRACT OR BINDING OFFER

AMENDED AND RESTATED LEASE AND OPERATING AGREEMENT

By and Between

THE CITY OF NEW HAVEN

and

TWEED-NEW HAVEN AIRPORT AUTHORITY

Dated as of [] 1, 2021

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NOT A CONTRACT OR BINDING OFFER

THIS LEASE AND OPERATING AGREEMENT (this “Agreement”) made effective as of [] 1, 2021 (the “Amendment and Restatement Effective Date”), and made by and between the CITY OF NEW HAVEN, a municipal corporation, duly organized and validly existing under the laws of the State of Connecticut (the “City”) and the TWEED-NEW HAVEN AIRPORT AUTHORITY, a political subdivision of the State of Connecticut, duly organized and validly existing under the laws of the State of Connecticut (the “Authority”).

WITNESSETH

WHEREAS, the Authority is a public instrumentality and political subdivision of the State, created pursuant to and having the purpose and powers set forth in the Act (as hereinafter defined); and

WHEREAS, the City is the owner of the land where the Airport is located, the boundaries of which are shown on the Property Map, as the same may be updated from time to time, the present configuration of which is attached hereto as Exhibit A; and

WHEREAS, the Authority and the City entered into the Original Lease effective July 1, 1998; and

WHEREAS, pursuant to the provisions of the Act, the Authority is responsible for the operation and management of the Airport and accordingly, the City and the Authority negotiated the Original Lease transferring the assets of the City located at the Airport and the responsibilities for operation of the Airport previously assumed by the City to the Authority; and

WHEREAS, the Authority has been in negotiation with a private investor who has offered to expend private funds to enhance the infrastructure of the Airport and expand commercial air service and provide funding for the Project (as defined herein); and

WHEREAS, a long-term extension of the Original Lease is necessary in order to assure the investment of said private funds; and

WHEREAS, expert financial analysts have thoroughly reviewed the Project and its relation to the Airport Master Plan and acknowledge risks as well as significant benefits to the Airport, the Authority, and the City; and

WHEREAS, in order to implement the aforesaid Project, certain responsibilities will be transferred by the Authority to the private investor in a sublease from the Authority for a portion of the Leased Premises, said responsibilities always to be subject to the statutory authority of the Authority and, to the extent applicable, the City as owner of the land on which the Airport is located; and

WHEREAS, the City will concurrently with the execution of this Agreement revise and/or repeal certain provisions of the City’s General Ordinances that are outdated, ineffective or no longer necessary; and

WHEREAS, the Authority and the City desire to amend and restate the Original Lease as heretofore amended in order to extend its term and to change various representations, warranties, covenants, conditions and other provisions in a manner more conducive to the Authority's entering into subleases, airline use agreements, contracts, concessions and other agreements and arrangements to induce private sector investment in the Project towards the purposes stated in said Chapter of the Act; and

WHEREAS, pursuant to its authority set out in Section 9 of the City's Charter and said Chapter of the Act, the Board of Alders of the City has duly resolved to enter into this Agreement in accordance with the procedures laid down in Section 41 of the City Charter; and

WHEREAS, at a meeting of the Authority's Board of Directors, duly called and held on July __, 2021, the Board of Directors has authorized the Chairperson of the Authority to execute this Agreement on behalf of the Authority;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. The terms set forth in this Section shall have the meanings ascribed to them for all purposes of this Agreement unless the context clearly requires otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires. Certain other words and phrases are separately defined within the body of this Agreement.

"Act" shall mean the Tweed-New Haven Airport Authority Act found in Connecticut General Statutes Chapter 267a, Sections 15-120g through 15-120o, as it may be from time to time amended.

"Agreement" shall mean this Amended and Restated Lease and Operating Agreement.

"Airport" shall mean the facility known as Tweed-New Haven Airport.

"AirportCo" shall mean that certain proposed counterparty and sublessee to a lease and operating agreement to be negotiated with the Authority with respect to the Project.

"Airport Assets" shall mean the Leased Premises, the Personal Property, and other all tangible or intangible personal property and all other personal property of every kind or nature, tangible or intangible, currently owned by or in the possession of the Authority or hereafter acquired by the Authority in connection with, or for the purpose of, administration, maintenance, management, regulation, operation, improvement, development or use of the Airport, including but not limited to, land or interests in land acquired by the Authority by purchase or lease in its own name from persons other than the City for protection of the surrounding airspace in accordance with FAA regulations, cash, equipment, accounts receivable, and contract rights.

“Airport Master Plan” shall mean the technical document developed in accordance with FAA Advisory Circular 150/5070-6B, dated January 27, 2015, as amended by the Authority on [_____], 2021, as may be amended from time to time.

“Amendment and Restatement Effective Date” is defined in the preamble.

“Authority” shall mean the Tweed-New Haven Airport Authority, a political subdivision of the State, duly organized and validly existing under the Act.

“Authorized Representative” shall mean, in the case of the Authority, its Chairperson, and in the case of the City, its Mayor.

“Authorizing Instrument” shall mean any ordinance, resolution, indenture or instrument of the Authority authorizing the issuance of notes, bonds or other similar financial obligations, the proceeds of which are to be used in connection with the Authority’s administration, maintenance, management, regulation, operation, improvement, development or use of the Airport.

“Avports” means Avports LLC f/k/a AFCO AvPorts Management LLC, a Delaware limited liability company.

“Board of Directors” means the board of directors of the Tweed-New Haven Airport Authority.

“Bond” or “Bonds” shall mean any bonds, notes or other similar financial obligations authorized by and at any time outstanding pursuant to any Authorizing Instrument of the City and/or the Authority.

“Claims” has the meaning given to it in Section 14.1.

“City” shall mean the City of New Haven, a municipal corporation, duly organized and validly existing under the laws of the State .

“Customer Facility Charge” shall mean fees or charges payable as a condition to access to the Airport.

“Demised Term” shall mean a period of sixty-six (66) years, commencing on the Effective Date, and originally expiring on June 30, 2023, and, as extended by this Agreement, expiring at 11:59 p.m. on June 30, 2064.

“East Terminal” shall mean the proposed new terminal that shall be constructed on the east-side of the Airport in the Town along with associated ancillary facilities, all subject to the applicable condition precedents and approval of the necessary permits.

“Effective Date” shall mean 12:01 a.m. on July 1, 1998.

“FAA” shall mean the Federal Aviation Administration of the U.S. Department of Transportation and any successor organization or agency.

“FAA Obligations” shall mean obligations to the FAA in connection with the acceptance of grants from the FAA, granting of an airport operating certificate by the FAA, submission of an airport security program to the FAA and any other obligations imposed on a federally obligated, commercial service airport under applicable federal law and regulations and policies of the FAA.

“Fees” shall mean collectively, PFCs, CFCs, and any other fees customarily charged to users at the Airport, but excluding, for certainty, customary fees and charges imposed by the City unrelated to the Airport operations.

“Fiscal Year” shall mean the twelve-month period commencing on July 1 of each year.

“General Ordinances” means the City’s Code of General Ordinances.

“Grant Assurances” has the meaning given to it in **Error! Reference source not found.**

[“Leased Premises” shall mean all those certain plots, pieces or parcels of land, with the buildings and improvements now or hereafter thereon erected and being situated in the City and the Town, and shown (i) on the City’s tax assessment records as Parcel 1 on Map 28, Block 900 (and identified as 255 Burr Street) and (ii) on the tax assessment records of the Town as map-block-lot numbers 120-1409-001, 150-1709-001, 150-1709-002, 150-1609-004, 180-2207-001, 180-2207-002, 180-2108-003, 180-2308-004, and that part of 180-2009-004 conveyed by Robert Celentano to the City in a Warranty Deed dated February 25, 2021 and recorded in the land records of the Town on March 1, 2021 in Volume 2769 Page at 330, but excepting therefrom the land conveyed by the City to Robert Celentano in a Quitclaim Deed dated [_____] and recorded in the land records of the Town on [_____] in Volume [] Page [], together with all improvements thereon and fixtures thereto, all appurtenances, rights, privileges, easements, licenses, rights of way and rights of entry benefiting, belonging or pertaining thereto, and shall further include any real property acquired by the City or the Authority for the purposes of the Airport. Improvements shall include (whether now in use or hereafter acquired or constructed) runways, aprons, hangars, control towers, ramps, taxiways, navigation aids, visual aids, warehouses, office and service buildings, structures, parking facilities, concession facilities, maintenance facilities, fuel facilities, facilities for the overnight accommodation of passengers and carrier employees, facilities for the loading, unloading, holding, interchange or transfer of such passengers, freight, baggage or cargo, but shall not include anything which would constitute Personal Property.]¹

“Original Lease” means that certain Lease and Operating Agreement with respect to the Airport effective July 1, 1998 as amended by that certain First Amendment of the Lease and Operating Agreement effective March 29, 2021.

“Other Proceeds” shall mean (a) federal grant funds; (b) rentals or other charges derived by the Authority under and pursuant to leases and concession agreements; (c) proceeds of sales of Bonds; and (d) the proceeds of any Customer Facility Charge, PFC or similar fee.

“Passenger Facility Charge” or “PFC” means moneys derived from charges imposed by the Authority pursuant to 49 U.S.C. § 40177, as amended or supplemented from time to time, and

¹ **Note to Draft:** definition to be confirmed prior to execution.

14 CFR Part 158, as amended or supplemented from time to time, or from any other substantially similar charges levied by or on behalf of the Authority pursuant to federal law.

“Permitted Encumbrances” shall mean any and all liens, encumbrances, security interests, leases, subleases, airline use agreements or other defects in, or clouds on, title (a) which may exist on the Amendment and Restatement Effective Date, (b) which by the express provisions of this Agreement, the City or the Authority is authorized to grant to a third Person or to which each of the City and the Authority has given its consent or (c) with respect to any *ad valorem* tax, assessment, user fee, licensing charge or other obligation to the United States, the State or any of their subdivisions or departments which are not yet due and payable and which are customarily subject to proration between buyers and sellers in real estate transactions.

“Person” shall mean any individual, corporation, limited liability company, general or limited partnership, or any other form of business entity, and any authority, trust or unincorporated organization, and any government or agency or political subdivision or branch thereof to the extent appropriate.

“Personal Property” shall mean (a) all furnishings, materials, supplies, machinery, equipment, related spare parts and other tangible personal property located at the Airport or, if not located at the Airport, used or specifically designated by the City to be used in connection with the administration, maintenance, management, regulation, operation, improvement, development or use of the Airport, including (without limitation) all tangible personal property used in (i) the air transportation of passengers, freight, baggage and cargo to, from, in, on or about the Leased Premises, (ii) the accommodation and servicing on the Leased Premises of aircraft of all types and (iii) the maintenance, development or improvement of the Leased Premises; and any other materials, supplies, plans and property contained in or about the buildings and structures located on the Leased Premises which are incidental to, or necessary or useful and convenient for, the administration, management, maintenance, regulation, operation, improvement, development or use of the Airport, including fixtures (other than removable trade fixtures) forming a part of the Leased Premises; (b) all books and records, operating data, drawings, designs, plans and other similar property; and (c) all intangible assets related to the Airport, including without limitation accounts receivable, prepaid expenses, contract rights, choses in action, trademarks and trade names and the goodwill associated therewith, and all rights under permits, licenses and similar authorizations used in connection with the Airport, all as the same shall exist on the Effective Date, provided that all accounts receivable which are allocable to the period prior to the Effective Date are hereby expressly excluded.

“Project” shall mean (i) the design, construction, financing, operation, and maintenance of a new East Terminal and associated ancillary and safety facilities including but not limited to parking, roads, and concessions, and (ii) extension of runway 2-20 to 6,635 feet as described in the Airport Master Plan, a new taxiway adjacent to the East Terminal, and access roads to the East Terminal.

“Project Document(s)” has the meaning given to it in Section 11.1(a).

“Responding Party” has the meaning given to it in **Error! Reference source not found..**

“Rent” has the meaning given to it in Section 3.2.

“Requesting Party” has the meaning given to it in **Error! Reference source not found.**

“Revenues” shall mean all revenues, fees, income, rents and receipts, received or accrued by the Authority in accordance with generally accepted accounting practices from or attributable to the Airport Assets or otherwise from the administration, management, maintenance, regulation, operation, improvement, development or use of the Airport, including without limitation (a) net payments received in connection with any future lease, sublease, airline use agreement or other contractual arrangement with respect to the use of any of the Airport Assets; (b) proceeds from the sale or other disposition of any assets owned by the Authority; (c) the proceeds of any insurance covering casualty losses or business interruption loss not used by the Authority for the restoration of damaged property or required to be paid to a third Person pursuant to the agreements governing any Bonds or any future lease, sublease, airline use agreement or other contractual arrangement with respect to the use of any of the Airport Assets.; and (d) any other revenue of the Authority that is considered to be Airport revenue as defined by provisions of federal law and the FAA’s Policy and Procedure Concerning the Use of Airport Revenue, as such may be amended from time to time.

“Sponsor” shall mean any public agency, as defined in 49 U.S.C. 47102, authorized by the FAA to submit requests for, and thereafter, to accept and be responsible for performing all of the assurances associated with grant agreements with the FAA with respect to airports, and for performing the duties and responsibilities to be assumed by virtue of acceptance of grants from the FAA or from any other agency of the United States, the State, or the City.

“State” means the State of Connecticut.

“State Subsidy” means a State subsidy to the Airport.

“Town” means the Town of East Haven.

“TSA” shall mean the Transportation Security Administration of the U.S. Department of Homeland Security or any successor organization or agency.

“West Terminal” shall mean the terminal existing on the west side of at the Airport as of the Amendment and Restatement Effective Date as such terminal may be renovated or modified from time to time.

ARTICLE II POWERS, PURPOSES AND GOVERNANCE OF THE AUTHORITY

Section 2.1 Purposes and Powers of the Authority. As of the Effective Date, the Authority shall be solely responsible for the operation and management of the Airport, in accordance with the rights, duties, and obligations set forth in the Act.

Section 2.2 Specific Obligations. Without prejudice to the generality of Section 2.1, above, as of the Effective Date, the Authority assumes responsibility for carrying out operations at the Airport, including any Airport programs, subject to and in accordance with the FAA

Obligations, and, to the extent funded, the implementation of the existing capital improvement program for the Airport, provided, however, that the Authority shall have the right to, in accordance with the Airport Master Plan, deal with these programs and the Project in any way that the Authority, in its sole discretion, deems necessary or advisable in furtherance of the Authority's duties and purposes hereunder, except to the extent such actions would violate applicable federal law or other applicable law or violate contractual obligations. In particular, the Authority shall not be obligated hereunder to proceed with any Airport program or projects for which there are no federal grants. The City shall cooperate with and assist the Authority in order to ensure that the Authority receives the full benefit of actions taken by the City prior to the Effective Date with respect to such programs and projects.

Section 2.3 Safety. Without prejudice to the generality of the obligations set forth in Section 2.1 above, the Authority shall comply with all safety requirements now or hereafter promulgated by the FAA and/or by any other federal, state or local authorities and with any and all federal, state or local law affecting the safe operations at the Airport, provided however, the Authority shall not be deemed to be in default hereunder if the Authority shall oppose (or commence legal proceedings challenging) any state or municipal legislation adversely affecting the safety and service levels of the Airport, including where such opposition or challenge is made on the basis of federal preemption or conflict of law. Notwithstanding the foregoing, the parties acknowledge that General Ordinance 4-70 is inconsistent with the Airport Master Plan and that if the FAA shall approve the updated Airport Master Plan, the City shall take action as may be necessary to ensure compliance with the approved Airport Master Plan. For clarity, the City acknowledges that that General Ordinance 4-70 cannot now be enforced pursuant to federal law and shall, if not consistent with the Airport Master Plan, be promptly repealed.

Section 2.4 Bylaws to be Amended. Prior to the Amendment and Restatement Effective Date, the Authority amended its Bylaws to require a supermajority, three-fourths, vote of the Board of Directors for authorizing certain actions with respect to the Leased Premises.

ARTICLE III LEASED PREMISES; DEMISED TERM

Section 3.1 Leased Premises; Use.

(a) The City leases and demises the Leased Premises to the Authority, and the Authority hereby leases the Leased Premises from the City for the Demised Term.

(b) The Authority shall use the Leased Premises to administer, maintain, occupy, regulate, operate, manage, control, improve, develop and use the Airport, to remodel, renovate, rehabilitate, reconstruct, expand, add to or demolish any existing buildings or other improvements (including any current or future terminals, hangars, runways, taxiways, roadways, driveways and parking lots), to construct new buildings and improvements, to enter into any contracts or agreements in furtherance of the foregoing and for any related or ancillary purposes, solely upon the terms and conditions herein expressed, until the expiration or sooner termination of the Demised Term.

(c) Subject to applicable law (and any regulations promulgated thereunder), the Authority shall have full power and authority over, and complete discretion in, the administration, maintenance, operation, management, control and use of the Leased Premises, including (without limitation) the right to enter into subleases, airline use agreements, concession agreements or management agreements, including subleases or management agreements with provisions which permit receipt of Airport revenues by such sublessee or manager and / or the sharing of Airport revenues between such sublessee or manager and / or the Authority, with discretion in the sublessee with respect to further sub-subleasing or licensing arrangements, and with authority granted to the sublessee and/or manager over any remodeling, renovation, rehabilitation, reconstruction, expansion, addition or demolition projects with respect to any existing or new buildings or other improvements which could be done by the Authority in its own behalf (without regard to whether the other party to such subleases or management agreements is given possession of the buildings or other improvements with respect to which such projects are to be executed) with respect to any portion of the Leased Premises, and to grant concessions and licenses to third parties to operate businesses at the Leased Premises in accordance with applicable law (except that no such sublease, airline use agreement, concession, license or agreement shall extend beyond the Demised Term without the express written consent of the City); provided that the Authority shall operate the Airport in a manner which is consistent with FAA, State and applicable local law and applicable regulations thereunder.

(d) The City covenants that the Authority shall fully, peaceably and quietly hold and enjoy the full possession of the Leased Premises from the Effective Date until the expiration or earlier termination of the Demised Term. Without limiting the generality of the foregoing covenant of quiet enjoyment, the City covenants that it has not and will not during the Demised Term enter into any lease, license, easement or other agreement, course of dealing or arrangement of any kind purporting to allow any Person owning or occupying any land adjacent to the Leased Premises to cross any boundary between such land and the Leased Premises for any purpose related to the operation of the Airport or otherwise including, without limitation, towing, taxiing or otherwise moving an aircraft in preparation for takeoff or after landing between the Airport's runways and taxiways and any off-Airport hangar, tie-down area or parking area, whether for the personal use of the owner or occupant of such land or for any tenant, licensee, invitee, customer or client of such owner or occupant or any business owned or operated by them without prior written consent from the Authority. Further, the Parties acknowledge and agree that, as of the Amendment and Restatement Effective Date, none of the Airport Assets are security for any Bonds of the City.

Section 3.2 Rent.

(a) During the Demised Term, the Authority shall pay the City a nominal annual rent of one (\$1.00) dollar (the "Rent").

(b) The City shall have no liability for any obligations incurred by, or any injury, loss or damage to, any Person or property arising out of any defaults of any third party operator, manager or sublessee to which the Authority shall have contracted responsibility for any administration, maintenance, operation, management, control and use of the Leased Premises.

Section 3.3 Condition of the Leased Premises. The Authority has been in full control of the Leased Premises since the Effective Date to the exclusion of the City and, therefore,

acknowledges that it accepted the Leased Premises as of the Effective Date, without warranty or representation by the City, express or implied, as to the condition, design, operation, merchantability or fitness or suitability of the Leased Premises for the Authority's purposes, except to the extent (if at all) specifically set forth in this Agreement.

Section 3.4 Cooperation. The City and the Authority agree to cooperate in good faith with one another during the Demised Term with respect to the Authority's operation of the Airport, including compliance with Exhibit C.

Section 3.5 Expiration or Termination of the Demised Term. Upon the expiration or sooner termination of the Demised Term, the Authority shall give up, surrender and deliver to the City the Leased Premises, in its condition at such time, together with all other Airport Assets, but free and clear of all liens, charges and encumbrances other than (a) the Permitted Encumbrances; (b) any indebtedness which is permitted hereunder and is incurred by the Authority in connection with the acquisition, construction, improvement, rehabilitation or development of the Leased Premises, and (c) all FAA Obligations.

Section 3.6 Consultation on Authority Performance. In the 20th year of the Demised Term, the City and Authority shall meet to consult and evaluate the quality of the Authority's performance under this Agreement and maintenance of the Airport, and will discuss whether performance revisions are appropriate.

Section 3.7 Recordation and Filing of Agreement or Notice. Upon the Amendment and Restatement Effective Date, the City and the Authority shall execute and cause to be recorded this Agreement, or a notice thereof in accordance with Section 47-12 of the Connecticut General Statutes, and any subsequent amendments thereto in the land records of the City and the Town, and if required by applicable law, shall file a copy of this Agreement in the appropriate offices of the City, the Town, the FAA, or any other state or federal agency or instrumentality or other public authority.

Section 3.8 Funding. The City will pay to the Authority subsidies in the following amounts, in each case, on or before October 1 of such Fiscal Year:

(a) For the Fiscal Year ending on June 30, 2022, Three Hundred Twenty-Five Thousand Dollars (\$325,000); and

(b) For the Fiscal Year ending on June 30, 2023, One Hundred Sixty-two Thousand Five Hundred Dollars (\$162,500).

Section 3.9 State Subsidy. It is understood that the Authority expects to be able to reduce the level of the State Subsidy and to no longer require any subsidy in the absence of unforeseen circumstances (such unforeseen circumstances to include, but be not limited to, a failure to enter into an agreement for the proposed Project) after a target date of June 30, 2024. Nevertheless, the Authority and the City agree to cooperate in seeking State and federal support as necessary.

Section 3.10 Revenue Bonds. The Authority shall be permitted to issue revenue bonds in accordance with the provisions of the Act provided that it is agreed and understood that in no

event shall the City be liable for repayment of such revenue bonds from any revenue or assets other than from assets pledged thereof, regardless of whether such assets shall revert to the City.

Section 3.11 Damage and Destruction. In the event that the Leased Premises and/or the Airport Assets or any portion thereof shall be damaged or destroyed by fire or other perils covered by the casualty insurance described in **Error! Reference source not found.** below, then subject to and in accordance with any and all requirements of the FAA, the Authority shall commence and proceed diligently with all necessary work of repair, reconstruction and restoration, and this Agreement shall continue in full force and effect, with no cessation of any other obligation of any party to this Agreement, except insofar as dictated by the FAA or by *force majeure*, arising out of such damage or destruction. With respect to such repair, reconstruction or restoration, the Authority shall be responsible for obtaining all requisite governmental approvals and permits (to the extent required) and the City hereby agrees to cooperate in the granting of the same, to the extent legally permissible. In the event that the Authority shall fail to carry out its obligations pursuant to this Section 3.11, or in the event that such damage or destruction shall result in the closure of the Airport (whether or not as a result of any intervention by the FAA) then all insurance proceeds shall become and remain the sole and absolute property of the City, except insofar as all or any portion of such proceeds are payable to the FAA.

ARTICLE IV TRANSFER OF PERSONAL PROPERTY AND AIRPORT ASSETS

Section 4.1 Tangible Personal Property. The Authority has had exclusive possession of the Leased Premises and all of the Airport Assets since July 1, 1998. Any representations by the City or warranties with regard to the Leased Premises have expired and the City hereby acknowledges that the Leased Premises at one time conveyed by the City to the Authority has been used in furtherance of its obligation to administer, maintain, operate and manage the Airport and for any related or ancillary purpose upon the terms and conditions set forth in this Agreement. The Authority shall have the right, in its sole discretion, to lend, lease, sell or otherwise dispose of or deal with any tangible Personal Property that have been transferred by the City to the Authority, and to alter, repair or replace the said tangible Personal Property, as the Authority shall, in its sole discretion, deem necessary or advisable in furtherance of the performance of its obligations and responsibilities hereunder. Any funds generated from the sale of Personal Property shall be reinvested in Airport Assets or otherwise used for lawful Airport purposes.

ARTICLE V AMENDMENT AND RESTATEMENT

Section 5.1 Amendment and Restatement Effective Date; Survival of Terms. The City and the Authority, in executing and delivering this Agreement on the Amendment and Restatement Effective Date, intend that the Demised Term shall be treated as a single lease term in continuous effect. The City and the Authority intend to create a single, integrated writing governing their relations with regard to the subject matter hereof to which they can readily refer with regard to the covenants and conditions of their respective obligations beginning with the Amendment and Restatement Effective Date. Various provisions of the Original Lease with regard to conditions that the City and the Authority believe in good faith have been fulfilled, or covenants that had been fully performed, prior to the Amendment and Restatement Effective Date have been deleted.

However, to the extent that there shall be any claim, dispute or controversy between the City and the Authority with respect to any act or omission to act on the part of either of them prior to the Amendment and Restatement Effective Date, the deletion or amendment of any provision contained in the Original Lease shall be construed as having prospective effect only and not as having abated or otherwise affected a claim or defense of either party with respect to any act or omission governed by the deleted or amended provision and completed prior to the Amendment and Restatement Effective Date.

Section 5.2 Rights of Third Parties Unaffected. The deletion or amendment of any provision contained in the original Lease and Operating Agreement affecting contractual rights of any sublessee, airline, concessionaire, contractor or other third party shall be construed as having prospective effect only and not as having abated or otherwise affected a claim or defense of any third party with respect to any act by the Authority governed by the deleted or amended provision and taken by such party in reliance on such provision prior to the Amendment and Restatement Effective Date.

ARTICLE VI REVENUES; RIGHT TO SET FEES

Section 6.1 Authority Right to Revenues. The City hereby acknowledges and agrees that federal law requires that all Revenue generated by the operation of the Airport shall be applied to the operating and capital expenses of the Airport, that all Revenue, inclusive of Customer Facility Charges and Passenger Facility Charges (levied under authority of 49 U.S.C. 40117 and the regulations of the FAA issued thereunder) shall be payable solely to the Authority to be applied to those expenses. Further, the parties acknowledge and agree that pursuant to a lease or other contractual arrangement, an Authority sublessee or other counterparty may be entitled a portion of the Revenues in accordance with the terms of such agreement.

Section 6.2 Authority's Right to Set Fees. The City has, by ordinance adopted by the Board of Alders of the City contemporaneously with the approval of this Agreement, authorized the delegation to the Authority of the City's powers and authority under its Charter and General Ordinances and under any provision of the Connecticut General Statutes, including Section 15-120(j)(3), to set, levy or impose Fees. Such delegation to the Authority is hereby made, ratified and confirmed. For certainty, at all times the Authority remains the Sponsor, the City shall have no right to set, levy, or impose any Fees at the Airport.

ARTICLE VII TRANSFER OF LICENSES, PERMITS AND APPLICATIONS

Section 7.1 Transfer of Licenses, Permits and Applications. Where necessary or desirable and to the extent not prohibited by any state or federal law, the City hereby ratifies and confirms its assignment and transfer to the Authority, as of the Effective Date any and all licenses, approvals, permits, determinations, findings, awards or decisions heretofore or hereafter issued or granted pursuant to or as a result of any application, review or process in relation to or in furtherance of the purposes of the Airport and previously filed or undertaken by the City. To the extent any prior assignment or transfer by the City may not apply to the extension of the Demised Term effected by this Agreement, the City and the Authority shall enter into one or more

agreements as may be necessary to extend such assignments and transfers, which agreements shall provide that any such application, review, process or proceeding shall inure to and be for the benefit of and shall be binding upon the Authority to the same extent and in the same manner as if the Authority had been a party to such application, review, process or proceeding from its inception, and that the Authority shall be deemed a party thereto. To the extent permitted by the approving or licensing party, all licenses, approval's, permits, determinations, findings, awards or decisions, hereafter issued or granted pursuant to or as a result of any such application, review process or proceeding shall inure to the benefit of and be binding upon the Authority, and any license, permit or approval granted to the City following the Effective Date shall be assigned and transferred by the City to the Authority to the extent such assignment and transfer is not prohibited by federal, state or municipal law.

ARTICLE VIII LIABILITIES

Section 8.1 Liabilities Not Assumed by the Authority. The Authority shall not be deemed to have assumed or be responsible for any of the following types of liabilities:

(a) liabilities to employees of the City or former employees of the City for workers' compensation, severance pay, sick pay, vacation pay, overtime or holiday pay, deferred salary or other form of benefit accrued as of the Effective Date or otherwise pertaining to the period prior to the Effective Date;

(b) liabilities for pension, retirement, death or disability benefits being provided or to be provided after the Effective Date to employees or former employees of the City, to the extent unfunded or partially unfunded as of the Effective Date;

(c) any claim of employees or former employees of the City for wrongful termination, denial of compensation, denial of benefits, discrimination as to employment or other similar employment related claims based upon events occurring prior to the Effective Date;

(d) any claim of a third party against the City, whether based in tort or contract or otherwise, based upon the acts or omissions of the City prior to the Effective Date;

(e) liabilities of the City for breach of any contract or agreements, whether or not relating to the Assigned Contracts, to the extent based upon events occurring prior to the Effective Date;

(f) violations of laws or regulations, and fines or penalties relating thereto, including violations of grant assurances set forth in grant agreements with the FAA, which occurred or existed prior to the Effective Date; and

(g) all liability and other responsibility relating to the release or threatened release of any pollutant, contaminant, or hazardous or toxic material at the Airport or related to the Leased Premises with respect to the acquisition, storage, handling, use, disposal or management of hazardous or toxic materials or wastes, including all discharges and releases thereof, prior to the Effective Date, and all other environmental liabilities and responsibilities relating to the Airport, the Leased Premises or the Projects, whether known or unknown, contingent or otherwise as of

the Effective Date, based upon conditions existing thereat or thereon as of the Effective Date or activities thereat or thereon or with respect thereto prior to the Effective Date, including without limitation liability and responsibility for existing underground storage tanks.

Section 8.2 Liabilities Not Assumed by the City. The City shall assume no responsibility with respect to (i) the obligations of any third-party operator of the Airport or Authority sublessee and (ii) liability arising from defaults under any lease, license, management agreement, or any other agreement concerning operation of the Airport.

ARTICLE IX ADDITIONAL ASSISTANCE FROM THE CITY

Section 9.1 Provision of Services. City shall, upon request by the Authority, provide services at the Airport, consistent with those services normally provided as part of its usual municipal services (e.g., police), which shall be paid for by the Authority at the City's rates then in effect. The Authority may seek such services from other agencies or entities if necessary or desirable in the Authority's discretion.

Section 9.2 Acquisition of Additional Property. The Authority does not have the power of condemnation. In the event the Authority deems it necessary or advisable, for the safe, efficient and financially prudent operation of the Airport, or to satisfy off-site mitigation conditions of any permit, license, permission or approval related to the operation of the Airport to acquire additional property in the vicinity of the Airport, and the Authority has not been able to acquire property that is satisfactory for such purposes through a negotiated purchase, the City may, in the exercise of the City's sole and absolute discretion (and subject to any required legal processes) exercise its right and power to take such property by eminent domain so long as such acquisition by condemnation is consistent with the Airport Master Plan, and the Authority shall pay to the City any and all costs of so acquiring such property, at least five (5) days prior to the date on which the City is required to pay such amount to the owner of such property. Any property so acquired shall be taken in the name of the City but shall be deemed to be a part of the Leased Premises immediately upon such acquisition. The parties shall promptly execute and record or file all instruments necessary or appropriate to amend this Agreement, so as to include the newly acquired property as a part of the Leased Premises. It is agreed and understood that failure to exercise such power of eminent domain shall be deemed to be reasonable and not a default by the City if the City shall receive an independent legal opinion that it has no legal authority to exercise its power of eminent domain in the given circumstances, or if any court or tribunal having jurisdiction shall make any such ruling.

ARTICLE X REPRESENTATIONS OF THE PARTIES

Section 10.1 Representations of the Authority. The Authority represents and warrants to the City, to the best of the Authority's knowledge, information and belief, as follows:

(a) The Authority is a body corporate and politic duly organized and validly existing under the provisions of the Act and has all necessary power and authority to enter into this

Agreement and the other transactions contemplated hereby, and to perform all of the duties and responsibilities undertaken by the Authority under and pursuant to this Agreement.

(b) The Authority, as of the date of execution of this Agreement, has taken all requisite action to approve this Agreement and the other transactions contemplated by this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with all of the terms and conditions contained herein.

Section 10.2 Representations of the City. The City represents and warrants to the Authority, to the best of the City's knowledge, information and belief, as follows:

(a) The City has no interest as owner or as lessee in any real estate used in the operations of or acquired for the Airport, except for the Leased Premises.

(b) The City is currently complying in all material respects with all covenants, conditions, restrictions, easements and similar matters affecting the Leased Premises.

(c) There is no action at law or in equity, no arbitration proceeding and no proceeding before any commission or other administrative or regulatory authority pending, or, to the knowledge of the City, threatened, against or affecting the Airport Assets or the operations of the Airport, or the City's right to carry on such operations as conducted as of the Effective Date.

(d) The City is not aware of any material written or oral contracts, agreements and other instruments affecting or arising from the operations of the Airport.

(e) The City has the power and authority to enter into this Agreement and the other transactions contemplated by this Agreement and to perform its obligations under and pursuant to this Agreement. This Agreement has been duly authorized, executed and delivered by the City and constitutes a valid and binding obligation of the City. No other governmental action is necessary to approve this Agreement and the other transactions contemplated by this Agreement.

ARTICLE XI COVENANTS OF THE PARTIES

Section 11.1 Covenants of the Authority. The Authority hereby covenants that, from and after the Effective Date:

(a) With respect to the Project, the Authority shall include the performance standards as, and to the extent, set forth in Exhibit D in a facility lease, operation and maintenance agreement, other contract with the private investor, or in another appropriate policy or regulatory document (each a "Project Document");

(b) Except as permitted herein with respect to subleases, licenses, concessions, leasehold mortgages or subtenants to whom the Authority has granted such rights and further assignments or transfers by such Persons, the Authority will not sell, pledge, assign, transfer, mortgage, hypothecate, encumber or otherwise dispose of all or any part of the Leased Premises without the advance approval of the City;

(c) The Authority will use all Revenues and Other Proceeds received and retained by it exclusively for the capital and operating costs of the Airport, and consistent with any Authorizing Instrument, the FAA Grant Agreements, federal law, and/or other agreements with respect to any other federal grants;

(d) The Authority, in its administration, maintenance, management, regulation, operation and use of the Airport Assets, will comply with all applicable laws, rules and regulations of the City, the state and the federal government;

(e) The Authority will establish and maintain a system of accounting in accordance with generally accepted accounting principles and will furnish the City with financial statements as requested by the City;

(f) The Authority shall at all times remain in compliance with its obligations under **Error! Reference source not found.** above;

(g) The Authority shall obtain and maintain (to the extent required by statute) workers' compensation insurance and/or any other such insurance for the benefit of employees which may now or hereafter be required by law;

(h) The Authority shall include a provision in all subleases, airline use agreements, licenses and concession agreements requiring the applicable counterparty to comply with applicable Law including the General Ordinances, as applicable. It is agreed and understood that no third party rights are created hereby, so that in particular (but without limitation) it shall not be the responsibility of the City to enforce the provisions of this Section 11.1(h);

(i) The Authority will comply with all federal laws, regulations, executive orders, policies and requirements; and

(j) The Authority will comply with certain General Ordinances with respect to equal opportunity as set forth in Exhibit C.

Section 11.2 Covenants of the City. The City hereby covenants that, from and after the Effective Date:

(a) The City shall not encumber the Airport Assets as security for any obligation; and

(b) The City shall not make any claim to any Revenues, or represent to any Person that any Revenues are assets of the City which may be attached by the City's creditors, including for the purpose of repaying any financial obligations, including City issued Bonds.

ARTICLE XII PROTECTION OF SUBLESSEES AND THEIR LEASEHOLD MORTGAGEES

Section 12.1 Protection of Sublessees. The City hereby agrees (upon thirty (30) days' prior notice) to execute a non-disturbance agreement, in such form as is reasonably acceptable to each applicable sublessee, whereby the City will agree to recognize the rights of all sublessees to occupy the subleased portions of the Leased Premises notwithstanding any termination of this

Agreement or proceedings brought by the City to dispossess the Authority; provided, however, that such non-disturbance agreement shall only be effective with respect to subleases which contain a clause whereby the sublessee thereunder agrees that, in the event of the cancellation, termination or surrender of this Agreement, it shall attorn to the City to the same extent and with the same force as though said sublease was a direct lease from the City to such sublessee. Except as such non-disturbance agreement may otherwise provide, each leasehold mortgagee, assignee and sub-sublessee of the sublessee party thereto shall be an intended third-party beneficiary thereof. The failure of the City to execute and deliver such non-disturbance agreement to the Authority, as aforesaid, shall constitute a material breach of this Agreement on the part of the City entitling the Authority to injunctive relief, damages and any other remedy available to it at law or equity.

Section 12.2 Estoppel Certificates. The City and the Authority agree to execute and deliver to the other and/or to any other Person designated by the party (including an Authority sublessee) requesting the certificate (the "Requesting Party") at any time and from time to time during the Demised Term, upon not less than thirty (30) days prior written notice from the Requesting Party, a statement in writing (the "Responding Party"):

- (a) certifying that this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating such modifications;
- (b) stating whether, to the best of the Responding Party's knowledge, the Responding Party is in default in the performance of its obligations hereunder and if so, specifying the nature of such default; and
- (c) stating the address to which notices to the Responding Party are to be sent.

Any such statement may be relied upon by any lender, bond holder, trustee, credit enhancer, or other Person proposing to enter into agreements with the Requesting Party as an estoppel of the Responding Party's right to assert a position inconsistent with the facts set forth in such statement.

Section 12.3 Leasehold Mortgages Granted by Sublessees Conditionally Permitted. Any sublessee of the Authority may, from time to time during the Demised Term, mortgage all or portions of its leasehold estate, provided in each case that:

- (a) the leasehold mortgage shall encumber only the sublessee's interest in the Leased Premises and its interest, if any, in any improvements constructed or acquired by the sublessee; and
- (b) the sublessee or the holder of the leasehold mortgage shall promptly deliver to the City, in the manner herein provided for the giving of notice to the City, a true copy of the leasehold mortgage and any assignment thereof, and shall notify the City of the address of the holder of the leasehold mortgage to which notices from the City may be sent.

Section 12.4 Status of Leasehold Mortgages. The following provisions shall apply with respect to any leasehold mortgage made in accordance with this Article and as to which the requirements of Section 12.3 have been satisfied:

(a) the leasehold mortgage shall be superior and prior in interest to any mortgage placed on, or any other interest created with respect to, the fee title underlying the Leased Premises, except involuntary liens which by law are superior and prior in interest;

(b) whenever giving notice to the Authority or a sublessee of the Authority of a claimed default by the Authority under this Agreement, the City will serve a copy of such notice on the holder of any leasehold mortgage of the sublessee in the manner herein provided for the giving of notice to the Authority, addressed to the holder of the leasehold mortgage at the address(es) furnished to the City pursuant to Section 12.3. No notice to the Authority or a sublessee of the Authority shall be effective unless a copy thereof is served on the holder of the leasehold mortgage(s) as herein provided;

(c) in the event of a curable default by the Authority under this Agreement, the holder of any leasehold mortgage with respect to a sublease shall have the right to cure such default within twice the time period herein given to the Authority, and the City shall accept such performance by the holder of the leasehold mortgage as though it had been performed timely by the Authority;

(d) in the event of a non-curable default by the Authority under this Agreement, if the holder of the leasehold mortgage with respect to a sublease commences a civil action to foreclose the leasehold mortgage within ninety (90) days after receipt of notice of such default from the City and prosecutes such action with reasonable diligence, the City shall take no action to terminate this Agreement as long as the foreclosure action is pending; and if a final judgment of foreclosure is entered in favor of the holder of the leasehold mortgage and is not followed by redemption by the Authority, the City will permanently forego its right to terminate the lease for such default;

(e) no cancellation, surrender, or material modification (including a partial cancellation or partial surrender) of this Agreement shall be effective as to any holder of a leasehold mortgage unless written notice has been provided to such leasehold mortgagee at least ninety (90) days prior to the effective date of such cancellation, surrender, or modification. Notwithstanding the foregoing, no modification with respect to ARTICLE III and this ARTICLE XII (including this paragraph (e)) shall be effective without the prior written consent of the holder of the leasehold mortgage. For purposes of this paragraph, a partial cancellation, partial surrender or modification of this Agreement is "material" if it reduces the term of the sublessee's sublease, purports to reduce the area of the premises demised to the sublessee in its sublease, increases the costs of the sublessee's occupancy by more than 10% of rent paid by sublessee in the preceding twelve-month period, or eliminates or reduces, without substantially equivalent replacement, an appurtenant right to the use of common facilities at the Airport actually used by the sublessee for utilities, access, parking or signage, but not a modification of this Agreement to conform the description of the Leased Premises to reflect a taking condemnation of any part thereof by any authority exercising the power of eminent domain; and

(f) notwithstanding the acquisition by the City or its successor in interest of the leasehold estate pursuant to Section 13.1 or otherwise, there shall be no merger of the fee estate

and the leasehold estate until the holder of the leasehold mortgage has fully released and discharged its leasehold mortgage.

Section 12.5 Amendments to Facilitate Leasehold Mortgages. The City hereby agrees and acknowledges that what is considered to be commercially reasonable market standard for leasehold mortgage financing may change during the course of this Agreement, and that the Authority's ability to sublease its interests hereunder and for such sublessee to be able to secure commercially reasonable leasehold financing is a material consideration for the Authority's willingness to enter into this Agreement. Based on the foregoing, the City agrees, throughout the Demised Term, to enter into any such amendments to this Agreement which may be reasonably required by any such leasehold mortgagee, as requested by the Authority, but only to the extent that the City's rights hereunder as a result of such amendment are not materially adversely affected.

ARTICLE XIII EVENTS OF DEFAULT

Section 13.1 Events of Default of the Authority. In the event the Authority shall fail to perform any of its obligations hereunder, then the City shall give written notice thereof to the Authority, and the Authority shall undertake to cure such default within thirty days of receiving such notice. In the event the Authority fails to cure such default during such thirty-day period, such failure shall constitute an Event of Default hereunder. Upon the occurrence of an Event of Default, or in the event that the Authority shall have any bankruptcy proceedings instigated against it (and such proceedings are not lifted within thirty (30) days of commencement of the same) or in the event that the Authority shall itself commit any act of bankruptcy, then, following delivery of sixty (60) days written notice by the City, if such Event of Default is not cured by the Authority during such sixty (60) day period (or if such Event of Default is of a nature which cannot reasonably be cured within such sixty (60) day period, then if the Authority shall not have promptly commenced a cure thereof within such sixty (60) day period and thereafter diligently pursued the same), or in the event that the Authority shall dissolve itself or be dissolved, the City shall terminate this Agreement and regain possession of the Leased Premises and all other Airport Assets at any time thereafter, but subject to (a) all FAA Obligations and (b) the rights of each sublessee and licensee of the Authority which is not then in default beyond the time allowed for cure under its sublease or license agreement and of each holder with respect to their sublet or licensed premises. Upon termination of this Agreement, the City shall be entitled to take full possession of the Leased Premises and all other Airport Assets that are not then subject to the rights of each sublessee and licensee of the Authority and of each holder with respect to their sublet or licensed premises and shall assume sole responsibility for the administration, management, maintenance, regulation, operation and use of the Airport.

Section 13.2 Events of Default of the City. In the event the City shall fail to perform any of its obligations hereunder, the Authority shall give notice thereof to the City. In the event the City shall fail to cure such ninety (90) days after receiving notice thereof, such failure shall constitute an Event of Default by such party. The Authority shall be entitled to take all action as permitted and to seek all remedies available at law or in equity and, in addition, shall be entitled (but not obligated) to make any payment or perform any act to cure such Event of Default and recover all such amounts expended from the City. The Authority shall provide to the City

appropriate documentation of all amounts or costs and expenses so paid or incurred, and the City shall have the right to review the Authority's books and records relating thereto.

ARTICLE XIV
INDEMNIFICATION AND INSURANCE

Section 14.1 Indemnification. The Authority hereby agrees to defend, indemnify, and hold harmless the City, and City's officers, agents, servants, and employees, from and against any and all actions, lawsuits, claims, damages, losses, judgements, liens, costs, expenses, and reasonable counsel and consultant fees sustained by any person or entity ("Claims"), to the extent such Claims are caused by the acts, errors, or omissions of the Authority or their respective employees, agents, or subcontractors, directly or indirectly arising out of, or in any way in connection with, any use of the Leased Premises pursuant to this Agreement.

Section 14.2 Insurance

(a) The Authority shall purchase from and maintain, with a company or companies with an A- or greater A.M. Best & Co. rating acceptable to the City and lawfully authorized to do business in Connecticut, such insurance as will protect the City and the Authority from claims which may arise out of or result from use of the Leased Premises by the Authority and/or by the invitees or permittees or others who may use or enter upon the Leased Premises under this Agreement for which the Authority is or may be legally liable.

(b) The Authority shall not act nor permit any actions on or at the Leased Premises which are or may be contrary to law or which will invalidate or be in conflict with any policy of insurance at any time carried by or for the benefit of the Authority with respect to the Leased Premises.

(c) Without prejudice to the generality of Section 14.2(b) above, the Authority shall obtain and maintain Commercial General Liability coverage including:

- (i) a combined Bodily Injury and Property Damage Limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the General Aggregate.
- (ii) Fire Damage Legal Liability Limit of no less than One Hundred Thousand Dollars (\$100,000).
- (iii) Medical Payments Liability Limit of not less than Ten Thousand Dollars (\$10,000).

(d) This limit of liability can be provided by a combination of an Umbrella and/or Excess Liability policy(ies).

Coverage must include the following endorsements:

- (i) Blanket Contractual Liability for liability assumed under this Agreement;
 - (ii) Severability of Interests; and
 - (iii) that the insurance provided is to be primary for the City, and all other indemnitees named in this Agreement.
- (e) The Authority must carry Workers' Compensation insurance as follows:
- (i) Coverage A – Statutory Benefits Liability imposed by the Workers' Compensation and/or Occupational disease statute of the State of Connecticut and any other governmental authority having jurisdiction.
 - (ii) Coverage B – Employer's Liability – Limits of not less than One Hundred Thousand Dollars (\$100,000) per accident; One Hundred Thousand Dollars (\$100,000) bodily injury per disease/employee; Five Hundred Thousand Dollars (\$500,000) policy by disease.
 - (iii) Extensions of Coverage
 - Other States Endorsement
 - Amendment of the Notice of Occurrence
 - Thirty (30) day written notice of cancellation, non-renewal.
- (f) The insurance required pursuant to this Section 14 shall be written for not less than the limits of liability specified herein or as required by law, whichever coverage is greater. Insurance coverage written on an occurrence basis shall be maintained without interruption throughout the Term from the Effective Date. If liability coverage is written on a claims-made basis, "tail" or "extended reporting period" coverage will be required at the expiration of the Term for a duration of twenty-four (24) months, or the maximum time period reasonably available in the marketplace. The Authority shall furnish certification of "tail" coverage as described or continuous "claims-made" liability coverage for twenty-four (24) months following the expiration of the Term. Continuous claims-made coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date. If continuous claims-made coverage is used, the Authority shall be required to keep the coverage in effect for the duration of not less than twenty-four (24) months from the date of expiration of the Term or, if appropriate, from earlier termination of this Agreement.
- (g) For all policies required hereunder the Authority hereby waives (or shall cause to be waived) subrogation against the City and any and all other indemnitees pursuant to Section 14 of this Agreement, and shall name the City as Certificate Holder and, except for Worker's Compensation, an additional insured. Further, each such policy shall provide that the insurance company will endeavor to give a minimum of thirty (30) days' written notice to the City prior to any modification or

cancellation (except for reason of non-payment of premium which shall be ten (10) days' notice) of any such insurance coverage and such notice shall be directed to the City in accordance with the notice provisions of the Agreement. The Authority shall furnish the City with the insurance policy(ies) and corresponding Certificate(s) of Insurance evidencing that it has complied with the obligations of this Section 14 on an arrival basis, including, but not limited to, requirements for (1) waiver of subrogation, (2) additional insured (with the exception of Worker's Compensation coverage), (3) notice of cancellation, and (4) Certificate Holder information. Certificates of Insurance acceptable to the City shall be filed with the City prior to the Effective Date and thereafter upon renewal or replacement of each required policy of insurance. If any of the insurance coverage required herein is to remain in force after the expiration of the Term, an additional Certificate of Insurance evidencing continuation of such coverage shall be delivered to the City.

(h) The Authority shall notify the City whenever fifty percent (50%) of the aggregate limits required hereunder are eroded during the required coverage period. If the aggregate limit is eroded for the full limit, the Authority agrees to reinstate or purchase additional limits to meet the minimum limit requirements stated herein. Any premium for such shall be paid by the Authority.

(i) Unless requested otherwise by the City, the Authority and the Authority's insurer shall waive governmental immunity as defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against the City.

(j) Any deductible or self-insured retention must be declared to, and approved by the City. All deductibles or self-insured retentions are the sole responsibility of the Authority to pay and/or to indemnify the City.

ARTICLE XV MISCELLANEOUS

Section 15.1 No Personal Liability. Absent wanton or willful conduct, nothing contained in this Agreement and no act of the Authority, any member or group of members thereof, or of the City or any official, officer or employee of the City, performed or omitted in pursuance, effectuation or implementation of this Agreement, shall be construed to give rise to or create any personal liability whatsoever on the part of any present or future director, officer or employee of the Authority or any official, officer or employee of the City.

Section 15.2 Waivers and Amendments. No failure to exercise and no delay in exercising on the part of the City or the Authority, as the case may be, any right, power or privilege hereunder, shall operate as the waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. Except as specifically provided herein, the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. This Agreement sets forth the entire agreement between the parties with respect to the matters addressed

herein and may not be amended or modified unless such amendment or modification is in writing and duly executed and delivered by the City and the Authority.

Section 15.3 Notices. All notices, requests and other communications under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by certified mail (a) to the Mayor of the City, with a copy to the Corporation Counsel of the City; (b) to the Authority at its offices, attention: Chairperson, or to such other address as the City or the Authority (as the case may be), shall hereafter designate by notice in writing pursuant to this Section 15.3. Such notices, requests and communications shall be deemed given and effective in the case of personal delivery upon receipt, and in the case of certified mail, two days after mailing thereof to the following addresses:

If to the City: []²

If to the Authority:
Tweed-New Haven Airport Authority
155 Burr Street,
New Haven,
CT 06512
Attn: Executive Director

Section 15.4 Severability. In the event that any one or more of the provisions contained in this Agreement is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Agreement shall be in no way affected, prejudiced or disturbed thereby.

Section 15.5 Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted in this Agreement for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 15.6 Authorized Representatives. The Authority may appoint one or more members, officers or employees as its authorized representatives for the purpose of taking any action by the Authority hereunder. The Authority shall notify the City in writing of its authorized representatives and may change the same by notice in writing.

Section 15.7 No Assignment. Except as expressly permitted by this Agreement, neither the City nor the Authority shall assign the benefit (in whole or in part) or any of the burdens of this Agreement without the prior written consent of the other, which consent may be granted or withheld in the sole and absolute discretion of such party.

Section 15.8 FAA Non-Objection. Without prejudice to any specific provision contained herein, and to the extent required by federal law, every provision of this Agreement is subject to the FAA's non-objection and in the event that any provision for which approval is required by federal law is disapproved by the FAA, then the provisions of Section 15.4 above shall apply. The

² **Note to Draft:** City to input.

Authority shall continue to be the sole signatory for FAA grant agreements and subject to FAA grant assurances as of the Effective Date.

Section 15.9 Incorporation of Exhibits. The exhibits attached hereto and referred to herein are incorporated herein and made a part hereof for all purposes as if fully set forth in this Agreement.

Section 15.10 Governing Law. It is hereby agreed, stipulated and understood that this Agreement is made under, and shall be governed by, the laws of the State and of the United States of America.

Section 15.11 Department of Airports. For so long as this Agreement shall remain in full force and effect the City shall not appoint any commissioners pursuant to Section 201 of the City Charter, and the provisions of the Act shall constitute compliance by the City with the obligations set forth in Article XXXIII of the said City Charter.

Section 15.12 Airport Master Plan. The Authority hereby agrees that it may not adopt any new Airport Master Plan (other than the Airport Master Plan currently being finalized for submission to the FAA) without first seeking review and comment by the City. Notwithstanding the foregoing it is agreed and understood that no input by the City under this Section 15.12 shall affect the Authority's ability to operate the Airport in accordance with the provisions of the Airport Master Plan and the FAA Obligations in effect as of the Amendment and Restatement Effective Date.

Section 15.13 Subordination.

This Agreement will be subject and subordinate to all the terms and conditions of any instruments and documents under which the City acquired the Leased Premises or improvements thereon. This Agreement shall be subject and subordinate to the provisions of any existing or future agreements between the Authority and the United States of America, or any of its agencies, relative to the operation and maintenance of the Airport, the terms and execution of which have been, or may be, required as a condition precedent to the expenditure or reimbursement to the Authority of federal funds for the development of the Airport, and to any terms or conditions imposed upon the Airport by any other governmental entity ("Grant Assurances"). In the event of an assertion of preemption with respect to this Agreement, the Authority shall use best efforts to preserve the intent of this Agreement. The parties agree that nothing in this Agreement shall violate applicable federal law or FAA Grant Assurances, and to the extent, any portion of this Agreement violates applicable federal law or the Grant Assurances, the parties shall amend such portions of this Agreement to comply with applicable law and FAA Grant Assurances.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the City and the Authority as of the day and year first above written.

WITNESSES

Tweed-New Haven Airport Authority, a political subdivision of the State of Connecticut

Name: _____

John Picard, Chairman

Name: _____

WITNESSES

City of New Haven, a municipal corporation

Name: _____

[]

Name: _____

EXHIBIT A
PROPERTY MAP

[attached separately]

EXHIBIT C
EQUAL OPPORTUNITY³

³ **Note to Draft:** City to provide.

EXHIBIT D⁴
PERFORMANCE STANDARDS

DRAFT

In furtherance of the implementation of the Airport Master Plan, the Authority is in negotiations for certain subleases, airline use agreements, licenses and concession agreements. The parties acknowledge that, for certainty, (i) the performance standards set forth below are intended to guide the Authority's negotiation of relevant Project Documents, and (ii) as such, with the appropriate Project Document, the Authority shall incorporate such performance standards as the Authority determines appropriate pursuant to good faith negotiations (iii) the Authority's issuance of the appropriate Project Documents will be conclusive evidence of the Authority having made such determination, and attached hereto.

Basic Terms

1. The Original Lease will be extended to be the same length of the Authority sublease to AirportCo (total of 43 years).
2. The runway will be extended to a length of 6,635 feet as per the 2021 Airport Master Plan recommendations and, on a schedule consistent with the runway extension project, the Authority will work with AirportCo on the construction of a new East Terminal with a defined building footprint that accommodates four aircraft gates and allows reasonable flexibility of space within that footprint for as many as two more aircraft gates. Any expansion of the footprint will require the Authority's prior approval.
3. Passenger parking will be moved to the east side upon completion of the East Terminal.
4. Before the East Terminal is built, AirportCo will renovate the West Terminal to accommodate new air service. In the event the East Terminal is not constructed, the size and capacity of the existing West Terminal will not exceed the aggregate of the existing passenger terminal and existing operations building and the capacity of parking will not exceed the aggregate of the existing passenger parking area and existing overflow lots to the north without Authority approval. Notwithstanding the foregoing, any use of the overflow lot south of the West Terminal shall terminate after two years from the notice to proceed on East Terminal construction. The Authority or AirportCo may invest in overflow parking off-airport and shuttle services if that proves necessary to support commercial operations prior to construction of the East Terminal. If, three years after the facility lease is executed, Avports has not started work on the East Terminal, Avports will in good faith seek FAA approval to relocate half of the parking from the West Terminal to the East Terminal to take advantage of existing pavement on the east side of the Airport.
5. "New Haven" to remain in the Airport name with any future airport naming rights requiring City approval.
6. AirportCo shall not be allowed to use landing fees or other financial incentives to attract general aviation to the Airport.

⁴ **Note to Draft:** limited to Section A of the City / Authority Term Sheet. The provision are inserted in this Exhibit verbatim, except with respect to making use of defined terms consistent.

Mitigation

7. AirportCo will promptly prepare and implement a traffic calming and wayfinding plan for areas affected by access to the Airport in coordination with the City and Authority and will invest \$1.5 million to implement the plan.
8. AirportCo will coordinate a new stormwater management model for the Airport and surrounding neighborhood and integrate recommendations into future Airport capital improvement programs. In tandem with the modeling effort, the Authority shall commit to a 2:1 ratio for wetland restoration and coastal habitat enrichment either on site or within the watershed of Tuttle Brook.
9. AirportCo will continue to operate and maintain, and upgrade (as appropriate), the Morris Creek tide gates, including potential installation of remote monitors and real time water level measuring system.
10. AirportCo will minimize the extent to which the runway extension will require changes to the current Airport Imaginary Surface Overlay Zone under the City's zoning ordinance.
11. AirportCo will develop a Sustainable Airport Development Plan according to current FAA guidance.
12. AirportCo will employ environmentally responsible principles including carbon neutral and LEED principles in the design of the east side terminal.
13. AirportCo will establish an Environmental Stewardship Advisory Committee consisting of 3 New Haven residents, 2 East Haven residents and staffed by the City's Engineering Department to assist AirportCo in promoting and maintaining sustainability efforts.
14. AirportCo will work with the flight school to minimize its impact at a minimum through arranging for quarterly inspections of flight school operations by the FAA Flight Standards District Office (FSDO) to ensure compliance with regulations for low lying aircraft over congested areas.
15. AirportCo will work with any fixed base operator at the Airport and the FAA Flight Standards District Office (FSDO) to ensure compliance with regulations for general aviation operations.
16. AirportCo's total commitment for noise mitigation, other mitigation, and community enrichment is \$5 million.

Jobs and Economic Impact

17. General Ordinances 12½ and 12¼ will be applicable for non-federal aid portions of the Project.
18. AirportCo will develop a permanent job pipeline in partnership with New Haven Works.
19. AirportCo will create and implement a robust Diversity Equity Inclusion (DEI) program for the Authority and all entities operating out of the Airport, including but not limited to car rental companies, news, gift, food and beverage concessionaires, airlines, contractors and fixed base tenants.

Noise

20. City noise ordinances will remain in effect. Provisions include requirements that engine

run-ups can only be conducted in designated locations and that engine run-ups and use of ground power units and auxiliary power units are only permitted between 7:00 AM and 10:00 PM. Existing penalties and fines will also be retained.

21. As set forth in the Airport Master Plan, the existing east-west runway will be closed and the East Terminal would be moved to the old runway, thereby decreasing noise exposure in existing City neighborhoods. Requirements from the updated noise study will be implemented within 5 years of FAA approval with an additional \$1.5 million to be invested by AirportCo for noise mitigation programs beyond that required under the noise study and \$250,000 to address general aviation noise. Noise mitigation will particularly focus on areas under the flight path that are higher in elevation such as Raynham Hill Rd.
22. AirportCo will implement additional noise limitations, after consultation with the Authority, FAA and the City to determine whether they would be useful and lawful. These additional limitations may include:
 - a. Additional restrictions on hours of operation;
 - b. Extended hours in which touch-and-go operations are prohibited, including limitations on weekends and holidays;
 - c. Extended hours prohibiting the use of GPUs and APUs;
 - d. Extended hours prohibiting aircraft maintenance run-ups and setting permissible locations as approved by the Authority for run-ups that minimize noise impact;
 - e. Limitations on use of reverse thrust limitations on jet aircraft;
 - f. Implementation of voluntary restraint from flying program;
 - g. Additional investment in noise abatement programs for affected neighborhoods including expanded residential sound insulation; and
 - h. Independent review airport flight pattern requirements (including helicopter operations), and revise, if feasible, to further reduce noise impacts below runway approaches and departures.