

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Airport
AGENDA DATE: February 26, 2008
CONTACT PERSON/PHONE: Patrick T. Abeln-780-4724
DISTRICT(S) AFFECTED: 3

SUBJECT:

Authorize the City Manager to sign a Certificated Passenger Airline Lease, approved as to form by the City Attorney's Office, by and between the City of El Paso and Pacific Wings, LLC d/b/a/ New Mexico Airlines. The term of the Agreement will be for a period of thirty (31) days beginning on March 1, 2008 and continuing on a month to month basis thereafter.

BACKGROUND / DISCUSSION:

New Mexico Airlines has requested to begin operations at El Paso International Airport on March 1, 2008 with flights to Alamogordo, Carlsbad, Ruidoso and Albuquerque. Attached is a schedule as of March 1, 2008

New Mexico Airlines will be leasing 92 square feet of ticket counter space at \$36.95 per square foot for a total annual amount of \$3,399.40. Additionally, they will be billed for activity based amounts as outlined in the agreement.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Presented to the Airport Advisory Board on February 21, 2008

COUNCIL ACTION REQUIRED: City Council did not delegate the authority to sign airport leases, concession agreements or operating agreements.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) Raymond L. Velles
Raymond L. Velles, Asst. City Attorney

FINANCE: (if required) _____

OTHER: Patrick T. Abeln, A. A. E., Director of Aviation Patrick T. Abeln
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

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New Mexico Airlines Schedule – March 1, 2008

El Paso to Albuquerque				
Flight	Depart	Arrive	Frequency	Stops
222	10:45 AM	1:02 PM	MO TU WE TH FR	2
272	4:30 PM	6:57 PM	MO TU WE TH FR	1

El Paso to Alamogordo				
Flight	Depart	Arrive	Frequency	Stops
222	10:45 AM	11:12 AM	MO TU WE TH FR	0

El Paso to Carlsbad				
Flight	Depart	Arrive	Frequency	Stops
272	4:30 PM	5:17 PM	MO TU WE TH FR	0

El Paso to Ruidoso				
Flight	Depart	Arrive	Frequency	Stops
222	10:45 AM	11:54 AM	MO TU WE TH FR	1

Source: New Mexico Airlines Website

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RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Certificated Passenger Airline Lease by and between the City of El Paso and Pacific Wings, LLC d/b/a New Mexico Airlines in substantially the same form as attached.

ADOPTED THIS THE 26TH DAY OF FEBRUARY 2008.

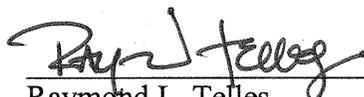
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

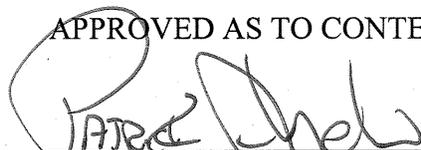
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A. A. E.
Director of Aviation

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EL PASO INTERNATIONAL AIRPORT
CERTIFICATED PASSENGER AIRLINE LEASE

BY AND BETWEEN

THE CITY OF EL PASO

AND

PACIFIC WINGS, LLC d/b/a NEW MEXICO AIRLINES
AIRLINE

MARCH 1, 2008
EFFECTIVE DATE

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CERTIFICATED PASSENGER AIRLINE LEASE

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EXHIBIT A Ticket Counter Area

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**EL PASO INTERNATIONAL AIRPORT
CERTIFICATED PASSENGER AIRLINE LEASE**

THIS CERTIFICATED PASSENGER AIRLINE LEASE (hereinafter referred to as the "Agreement") is entered into this ____ day of _____, 2008, by and between the **CITY OF EL PASO, TEXAS** ("City") and **PACIFIC WINGS, LLC, d/b/a NEW MEXICO AIRLINES**, a limited liability company organized and existing under the laws of the State of Nevada ("Airline").

WITNESSETH:

WHEREAS, the Municipal Airports Act of the State of Texas (Article 46d, Vernon's Texas Civil Statutes) authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality;

WHEREAS, the City owns and operates the El Paso International Airport located in the County of El Paso, Texas ("Airport"), which is managed by the Director of Aviation ("Director") for the Aviation Department of the City ("Department");

WHEREAS, the Airline is engaged in the business of transportation of persons, property, or mail by air and desires to use certain facilities at the Airport and lease from the City certain premises and facilities in connection with Airline's use of the Airport;

WHEREAS, in furtherance of its authority, the City desires to lease to the Airline certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement; and

WHEREAS, the City and the Airline have the power and authority to enter into this Agreement;

NOW, THEREFORE, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1 – LEASED PREMISES

SECTION 1.01 DESCRIPTION OF THE LEASED PREMISES

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, the City does hereby demise and lease to the Airline and the Airline does hereby lease from City the following described leased Premises located in the Airport terminal (collectively

referred to herein as the “Premises” or the “Leased Premises”), which is more fully described in **EXHIBIT “A”** and which is attached hereto and incorporated herein for all purposes:

Ticket Counter Space: Ninety-two (92) Square Feet

SECTION 1.02 REQUIREMENT TO OPERATE WITHIN THE LEASED PREMISES

Airline shall, at all times, occupy, operate in and use only that space within the confines of the Leased Premises identified herein. Failure of Airline to operate fully within the confines of the Leased Premises shall be deemed a breach of this Agreement. Director shall notify Airline in writing of any infraction of this provision and, upon any continued infraction, City shall either: (i) charge Airline double the normal specified monthly rent for the unauthorized occupancy or use of the Leased Premises; or (ii) terminate this Agreement for default. Airline further agrees that it will, at all times, occupy and use the Leased Premises so that its operations and passengers do not impede or inconvenience the operations or passengers of other airlines or the Airport, in general.

SECTION 1.03 REASSIGNMENT OF THE PREMISES DURING CONSTRUCTION

The Director may temporarily reassign any portion of the Leased Premises or other areas utilized by the Airline during any construction after reasonable written notice is provided to Airline. The cost for any temporary relocation resulting from construction shall, at the discretion of City, be either borne by the airline necessitating the relocation or shall be included as part of the City’s project cost. During the period when Airline is temporarily relocated, appropriate adjustments to rental and other fees shall be made to reflect any differences between the area of the Leased Premises and the area of temporarily assigned premises.

ARTICLE 2 - RIGHTS AND SPECIFIC PRIVILEGES

SECTION 2.01 USE OF THE AIRPORT

Airline, its employees, passengers, guests, patrons, agents, independent contractors and invitees shall have the right to use, in common or jointly with other duly authorized users, those portions of the Airport, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their common or joint use, subject to this Agreement, the rules and regulations of the Airport and any applicable local, state or federal law.

SECTION 2.02 SPECIFIC RIGHTS OF AIRLINE AT THE AIRPORT

Airline shall have the right to use the Airport for the following purposes, subject to this Agreement, the rules and regulations of the Airport and any applicable local, state or federal law:

- A. The operation of a public air transportation system by aircraft for the carriage of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, or testing of aircraft or other equipment of or operated by Airline.

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- C. The sale of tickets, documentation of shipments, handling of reservations, and the loading and unloading of persons, property, cargo, and mail at the Airport by such motor vehicles or other means of conveyance as Airline may desire to use in the operation of its air transportation system. City reserves the right to require any ground transportation commercial carrier, including Airline, transporting persons to and from the Airport to first secure and thereafter hold a valid lease, license, or other agreement with City for the right to carry persons to and from the Airport and to pay City such rentals, fees and/or percentages of the fares charged by such ground transportation commercial carrier for such right as City may set. City agrees not to require such agreement or payments for such courtesy, free ground transportation as Airline or its authorized contractor may provide solely for the benefit of Airline's employees.
- D. The training of persons and testing of aircraft and other equipment at the Airport, such training and testing to be limited to that incidental to Airline's air transportation business. Flight training and aircraft testing shall be undertaken by Airline only to the extent permitted by and subject to the Airport rules and regulations and in only those areas designated by Director.
- E. The purchase of Airline's requirements of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's air transportation business. Nothing herein shall restrict the City from levying nondiscriminatory concession or privilege fees or charges on any person or company conducting business at the Airport other than an air transportation service.
- F. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, in locations identified from time to time by the Director, subject to the City's rules and regulations. The Director reserves the right, at any time, to designate other locations reasonably accessible from the Airport Terminal Building for the performance of aircraft maintenance and service activities if Director believes that such activities would interfere with aircraft operations of other airlines at the Terminal Building.
- G. The installation and operation of identifying signs and graphics on the Premises, subject to the prior written approval of Director, provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other airlines; (2) consistent with Department's graphics standards as established from time to time by Director; (3) in compliance with the City's rules and regulations; and (4) in compliance with El Paso City Code and all other local, state and federal laws and ordinances.

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- H. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, aerial navigation or other systems. The location of such equipment and facilities, method of installation and type of equipment shall require the prior written approval of Director and shall conform with all applicable federal, state, and local requirements.
- I. The provision of baggage porter, skycap, or curbside airline baggage check-in services. Airline may arrange with other airlines to provide such services or may provide such services on its own behalf.

All rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to the Agreement are reserved for and to City.

SECTION 2.03 EMPLOYEE PARKING FACILITIES

Airline's employees working at the Terminal Building will be provided vehicular parking facilities, if available, in common with other employees. Such facilities shall be located in an area designated by Director. City reserves the right to assess a reasonable charge to Airline or its employees for such parking facilities.

SECTION 2.04 LIMITATION ON USE BY AIRLINE

In connection with the exercise of its rights under this Agreement, Airline:

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the use, operation, or maintenance of the Airport, including but not limited to effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Leased Premises or the Airport.
- B. Shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from Director to do so.
- C. Shall not dispose of or permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft into the

sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to hazardous materials.

- D. Shall not keep or store any hazardous materials such as flammable liquids and solids, corrosive liquids, compressed gases, or magnetized or radioactive materials on the Airport.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport without prior written approval of City. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and City.
- F. Shall not maintain or operate in the Terminal Building or elsewhere at the Airport, a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public, its employees, or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Airline may dispense food and beverages on board Airline's aircraft or to passengers boarding Airline's aircraft for consumption on board and provide vending machines solely for the sale of hot and cold beverages, food, and confections to Airline employees in areas not accessible to the general public. Airline may, by separate agreement with the City and to the extent it does not conflict with any terminal concession agreements, engage in the provision or sale of food or beverages at any airline club room or similar private facility at the Airport.
- G. Agrees to comply with all security measures required of Airline or City by the Transportation Security Administration ("TSA") or contained in City's TSA-approved Master Security Plan for the Airport, as such plan may be amended from time to time, or in any Airport Tenant Security Program as outlined in TSA Part 1542 with respect to the Leased Premises. Any fines and/or penalties levied against City for security violations at the Airport resulting from any non-compliance of Airline, its employees, officers, agents, affiliates, or suppliers, shall be immediately due and payable to City by Airline.
- H. Shall park ground service or other equipment on the Terminal Building aircraft apron only at areas designated by the Director from time to time.
- I. Shall not install any coin-operated or card operated machine(s) or device(s), except for: (1) machines for the sale of Airline's tickets or issuance of boarding passes located on Airline's Leased Premises or other areas approved in writing by Director; or (2) beverage or snack machines as provided for herein.

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SECTION 2.05 AIRPORT USE SUMMARY

Airline shall file with Director an Airport Use Summary, in a form acceptable to Director, providing the information specified below and such other information as Director may reasonably request regarding Airline's operation at the Airport. Airline shall, at all times,

maintain a current version of such Airport Use Summary on file with Director. The Airport Use Summary shall include the following information:

- Names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.
- The current and proposed schedules of Airline's flight activity at the Airport. Airline shall notify Director of schedule changes or the addition or deletion of flights at the Airport prior to or no later than the public announcement thereof.
- The description of Airline's fleet and identification of the type of Airline's aircraft that are serving or will serve the Airport. Airline shall provide notice of the introduction of any aircraft that is not being operated by Airline at the Airport as of the date of this Agreement.
- Airline's aircraft recovery plan for disabled aircraft.

Such Airport Use Summary shall be updated and re-filed with Director whenever there is a change to the nature of Airline's operations at the Airport or whenever Director shall reasonably request the same.

ARTICLE 3 - TERM

SECTION 3.01 TERM. The term of this Agreement shall be for a period of thirty-one (31) days commencing on the 1st day of March, 2008, expiring on the 31st day of March, 2008 and continuing from month to month thereafter, unless either party shall give twenty-five (25) days written notice of termination.

SECTION 3.02 SURRENDER OF THE PREMISES

- A. Airline covenants and agrees that on the termination of this Agreement or on reassignment of the Leased Premises as provided herein, it will peaceably surrender possession of the Leased Premises hereunder in good condition, reasonable wear and tear excepted, and the City shall have the right to take possession of the Leased Premises. City shall not be required to give notice to quit possession at the termination of this Agreement.
- B. Airline shall have the right, on termination and within thirty (30) calendar days thereafter, at its expense to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline in, on, or about the Premises, subject to any valid lien that City may have thereon for unpaid rents or fees.
- C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the property on which it is

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located, and title thereto shall thereupon vest in City. In the alternative, Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of any remaining Airline property after such thirty (30) day period.

ARTICLE 4 - RENTALS AND FEES

Airline shall pay to City at such places as the Director may designate from time to time for the use of the premises, facilities, rights, licenses, services and privileges granted hereunder, the following rentals, fees and charges, all payable in monthly installments. In the event that the commencement or termination of the term with respect to any of the particular premises, facilities, rights, licenses, services and privileges herein granted falls on any date other than the first or last day of a calendar month, the applicable rentals, fees and charges (except landing fees) for that month shall be prorated on a daily basis.

4.01 RENTAL FOR LEASED PREMISES

During the initial term hereof the rental rate applicable to the Leased Premises shall be at the following rate:

\$36.95 per square foot per annum for the Ticket Counter Space or the current applicable rate as defined by budget resolution. Said rental shall be paid on or before the first day of each month throughout the term of this Agreement, without the necessity for an invoice.

4.02 LANDING FEES

For the rights herein granted the Operator will pay to the City for each landing at El Paso International Airport, while engaged in commercial activity, a minimum fee of \$1.96, or the then current landing fee paid by El Paso certificated airlines. Said landing fee to be calculated on a per thousand pounds basis (or fraction thereof) of the maximum gross landing weight of the aircraft as certified by the FAA. The fees for each landing will be due each calendar month and payable within ten (10) days from the end of the month in which the landings occurred. Each payment shall be accompanied by a statement showing the dates of all revenue flights made to or from the Airport during the month; the maximum gross landing weight of each aircraft landing at El Paso International Airport and any additional details and breakdown required by the Director.

4.03 ELECTRICITY CHARGES

Airline shall pay City charges for electrical power used in the Leased Premises at the rate of \$4.29 per square foot per annum, or the current applicable rate as defined by budget resolution. Such charges shall be paid on or before the first day of each month throughout the term of this Agreement, without the necessity for an invoice.

4.04 RAMP USE FEES

Airline shall pay City a Ramp Use Fee of \$300.00 per month. Such fees shall be paid on or before the first day of each month throughout the term of this Agreement, without the necessity for an invoice.

4.05 STORAGE OF AIRCRAFT

The Director shall designate storage parking areas for Airline’s aircraft. Airline shall pay City charges for such storage of aircraft at the rate of \$20.00 per day per aircraft, or the then current applicable rate as defined by budget resolution; provided, however, that such charges shall be imposed for storage for each aircraft stored in excess of eight (8) hours, in any single 24-hour period. Any storage time in excess of eight (8) hours shall be considered storage for one (1) day. Storage charges shall not be imposed for aircraft, the departure of which is delayed by reason of weather, mechanical failure or other causes not within control of Airline. Such charges shall be due and payable within thirty (30) days of Airline’s receipt of invoice.

4.06 EQUIPMENT PARKING RENTALS

The Director shall designate equipment parking areas for Airline’s equipment. Airline shall pay City charges for such equipment parking at the rate of \$2.50 per square foot per annum, or the then current applicable rate as defined by budget resolution. Such charges shall be due and payable within thirty (30) days of Airline’s receipt of invoice.

4.07 AIRPORT IDENTIFICATION/ACCESS FEES

Airline shall pay all fees associated with Airport badging of Airline’s employees, including but not limited to all related background and fingerprinting costs, prior to gaining access to secured areas of the Airport.

4.08 PASSENGER FACILITY CHARGE

- A. City shall have the right to assess Airline’s passengers a passenger facility charge (“PFC”) for the use of the Airport in accordance with the requirements of 14 CFR Part 158, as amended (“PFC Regulations”). In such event, Airline shall collect on behalf of and remit to City any such charges in accordance with the requirements of the PFC Regulations. Any charges collected by Airline shall, pending remittance to City, be held in trust for the benefit of City. City shall have the right to use all PFC revenue collected in any lawful manner.
- B. Airline and City shall be bound by and shall observe all of the provisions of the PFC Regulations as they apply to either or both parties.
- C. If any extension of this Agreement makes its term five (5) years or more, any part of the Airport funded in whole or in part with PFC revenue and exclusively leased to Airline shall be subject to a separate agreement of less than five (5) years in length.

4.09 PAYMENTS

All payments provided herein shall be paid to City at the following address:

Accounting Department
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

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4.10 UNPAID RENT, FEES AND CHARGES

For any installments of rent, any fees, or other charges or monies accruing under any provision of this Agreement that are not received within the 10th day of the date in which payment is due, such payments shall bear interest at a rate equal to the maximum allowed by law from the date when the same was due according to the terms of the Agreement until actually paid by Airline.

4.11 TAXES AND OTHER CHARGES

The Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Airline or the City, with respect to the Leased Premises, during the term of this Agreement including any extensions granted thereto. Airline shall be responsible for and shall pay all taxes, which may be levied or assessed against Airline's interest in this Agreement or machinery, equipment or other personal property owned or used by Airline and located on the Leased Premises.

The Airline in good faith may contest any tax or governmental charge; provided that the Airline may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless in the opinion of counsel satisfactory to the City such action will not adversely affect any right or interest of the City.

4.12 DEFAULT FOR FAILURE TO PAY RENTALS, FEES AND CHARGES

In the event Airline fails to pay any rentals, charges, and fees hereunder within the due date(s) established herein, City may, at its option, and upon ten (10) days written notice to Airline (unless in such ten-day period Airline shall have corrected such failure to pay) immediately or at any time thereafter, enter into and upon the Lease Premises or any additional storage, parking or other related areas utilized by Airline and repossess the same. In said event, City may expel Airline and those claiming by, through or under it and remove Airline's effects forcibly, if necessary, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or preceding breach of covenant. On reentry, as aforesaid, this Agreement shall terminate.

ARTICLE 5 – AIRLINE REPORTS

SECTION 5.01 MONTHLY ACTIVITY REPORT

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- A. Airline shall furnish to Director, on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals, fees, and charges due under this Agreement and to prepare a monthly report. Said report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month to include any non-scheduled and charter operations; (2) the total number of Enplaned Passengers and Deplaned Passengers to include any non-scheduled and charter operations; (3) the number of Enplaned Passengers who are originating their air journeys at the Airport (rather than transferring from other flights of

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Airline or other airlines at the Airport); (4) the number of Enplaned Passengers who are non-revenue passengers or frequent flier award coupon passengers as such terms are defined in 14 CFR Part 158, as amended; (5) the total number of Aircraft Arrivals and departures from non-preferentially assigned gates or City-owned loading bridges; (6) the number of arriving international passengers using the International Arrivals Area; (7) the weight of cargo, freight, mail, and express for such month; and (8) any other data needed to establish and assess rates and charges or necessary to justify the monthly report required herein. Airline shall also report the activities set forth herein for any Affiliate or other airline or charter, which is handled by or uses the Leased Premises of Airline.

- B. If Airline fails to furnish Director with the report as required herein, it shall be considered in default under this Agreement and Airline's rentals, fees, and charges, as provided for hereafter, shall be determined by assuming that Airline's Total Airline Landed Weight and Enplaned Passengers for such month was one hundred fifty percent (150%) of its Total Airline Landed Weight and Enplaned Passengers during the most recent month for which such data are available for Airline and by applying the rates specified herein and the applicable City budget resolution. Any necessary adjustment in such rentals, fees, and charges shall be calculated after an accurate report is delivered to Director by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the succeeding month.

SECTION 5.02 RECORDS OF AIRLINE

Airline shall keep and maintain a complete and adequate set of records of all landing weights and other information specified herein or otherwise required for the calculation or payment of fees required under this Agreement for each fiscal year and the three (3) immediately preceding fiscal years, and shall make such records available for inspection by Director at any and all reasonable hours and times.

SECTION 5.03 RIGHT OF SET OFF

City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). In the event City exercises the right of set off it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

ARTICLE 6 - MAINTENANCE AND OPERATION OF AIRPORT

SECTION 6.01 CITY'S RESPONSIBILITIES

- A. City agrees that it will, with reasonable diligence, keep the Airport and its aerial approaches reasonably free from obstruction and interference for the safe and proper use thereof by Airline; and will develop, maintain, and operate the Airport in all respects in a manner at least equal to the standards or rating established by the FAA and any other governmental agency having jurisdiction thereof, except

for conditions beyond the control of City. City shall not be liable to Airline for temporary failure to so perform, whether due to mechanical breakdown or for any other causes beyond the reasonable control of City.

- B. City, with its own forces or by contract, shall operate and maintain and keep in good condition the Terminal Building and all additions, improvements, facilities, and equipment now or hereafter provided by City at or in connection with the Terminal Building, except any improvements, facilities, and equipment constructed or installed by Airline or other tenants of the Airport. City shall be responsible for keeping the Terminal Building, except any leased areas, in a neat, orderly, sanitary, and presentable condition.
- C. City, with its own forces or by contract, shall at all times maintain the public areas of the Terminal Building so as to provide for reasonable unobstructed use thereof by passengers and invitees, and shall keep such area adequately supplied, equipped (including directional signs), furnished, and decorated.
- D. City shall supply or cause to be supplied appropriate and adequate equipment and maintenance for air conditioning, lighting, ventilation, heating, electrical, water, and sewerage facilities for Terminal Building public use areas; adequate illumination throughout the Terminal; and janitorial services in Terminal Building public use areas.
- E. City shall operate the Airport and shall exercise these rights in accordance with applicable laws and regulations.

SECTION 6.02 AIRLINE'S RESPONSIBILITIES

Subject to the applicable provisions of this Agreement:

- A. Airline shall, at all times, keep its Leased Premises neat, orderly, sanitary, and presentable. Airline shall cause to be removed at Airline's own expense from its Leased Premises all waste, garbage, and rubbish, and agrees not to deposit the same on any part of the Airport, except that Airline may deposit same temporarily in the Leased Premises or in such other space designated by Director in connection with collection for removal.
- B. Airline shall maintain the Ticket Counter Space and any assigned ramp area(s) in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease, and immediately remove all oil and grease spillage from its aircraft parking positions that is attributable to Airline's activities, aircraft or equipment.
- C. Airline shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair (except structural repairs and repairs necessitated by latent defects in facilities provided by City) of its Leased Premises including, but not limited to, all facilities, personal property, trade fixtures, and equipment. For

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purposes of this provision, structural repairs are defined as repairs to the roof, foundation and exterior walls of the terminal building.

- D. Airline shall immediately repair any damage in any other space at the Airport occasioned by the activities, fault or negligence of Airline, its servants, agents, employees, licensees, passengers, and invitees.
- E. Airline shall not erect, maintain, or display on its Leased Premises or anywhere in the Terminal Building in the public view any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Director.
- F. Airline expressly agrees that City shall not be liable to Airline, for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority.
- G. Airline shall provide and maintain hand fire extinguishers for the interior of its Leased Premises space in accordance with applicable safety codes.

SECTION 6.03 CITY'S RIGHT OF ENTRY

City, by its Director or other authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right during normal business hours upon reasonable notice or, in the case of emergencies, without notice, to enter upon Airline's Leased Premises space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

- A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.
- B. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary if Airline fails to perform its obligations under this Agreement, and to recover the actual cost of such maintenance, cleaning, or repair from Airline, plus a fifteen-percent (15%) administrative charge from Airline on the next rent due.
- C. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary and which is the responsibility of City under this Agreement.
- D. For the purpose of exhibiting same to prospective tenants, purchasers or others.

The exercise of this right of entry shall not be deemed an eviction or disturbance of Airline's use or possession provided City shall exercise its best efforts not to interfere with Airline's normal operations in the Leased Premises.

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SECTION 6.04 ALTERATIONS AND IMPROVEMENTS

- A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the Leased Premises without the prior written approval of Director.
- B. Plans and specifications for any such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and State and Federal laws and regulations.
- C. All Airline alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon expiration, or early termination, of this Agreement.

SECTION 6.05 ENVIRONMENTAL REGULATIONS

Airline shall comply with all applicable environmental regulations, including, but not limited to the following:

- A. Airline shall not cause or permit any hazardous materials to be stored or used on or about the Airport by Airline, its agents, or employees.
- B. Airline shall, at all times and in all respects in connection with its use and occupancy of the Airport, comply with all present and hereinafter enacted local, state, and federal laws, ordinances, regulations, orders, and any amendments thereto relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of hazardous materials on, about, or from the Airport. Without limiting the foregoing, Airline shall comply with all applicable environmental laws at all times in connection with its use and occupancy of the Airport. Airline shall also comply with permits held by City as and to the extent Airlines activities may impact City's ability to comply with such permits including, but not limited to, the Airport stormwater permit issued pursuant to the Clean Water Act, the Municipal Separate Storm Water permit issued pursuant to the Clean Water Act or any reissued version of either permit, whether issued by the US Environmental Protection Agency ("EPA") or the Texas Commission on Environmental Quality ("TCEQ") or any predecessor or successor agencies. This list of permits is provided by way of example only and is not intended to be fully inclusive. During the term of this Agreement, if City becomes aware of other permits which are impacted by the Airlines activities, it will provide Airline with written notice of those permits.
- C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the Airport. Airline shall cause any and all hazardous materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all hazardous materials on

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or about the Airport in conformity with all applicable environmental laws or any successor laws thereto and prudent industry practices regarding the management of such hazardous materials.

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- D. If at any time Airline shall become aware, or have reasonable cause to believe, that any hazardous material has come to be located on or about the Airport in violation or potential violation of any environmental law, Airline shall, immediately upon discovering such presence or suspected presence of the hazardous material, provide City with written notice of that condition. In addition, Airline shall immediately notify City in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Airline at the Airport pursuant to any environmental laws; (2) any claim made or threatened by any person against Airline or City relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any hazardous materials at the Airport; and (3) any reports made by Airline to any local, state, or federal environmental agency arising out of or in connection with any hazardous materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Airline shall also supply to City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Airport or Airline's use thereof. Airline shall promptly deliver to City copies of hazardous waste manifests reflecting the legal and proper disposal of all hazardous materials removed from the Airport by or on behalf of Airline.

ARTICLE 7 - DAMAGE OR DESTRUCTION OF PREMISES

SECTION 7.01 DAMAGE OR DESTRUCTION

- A. If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the particular building, rooms, or other portion of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that City shall exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed.
- B. If Director shall fail to notify Airline of its decision to repair any untenable Leased Premises within sixty (60) days after the destruction, City shall be deemed to have elected to terminate this Agreement as to the space damaged and

destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage or destruction.

ARTICLE 8 - INSURANCE AND INDEMNIFICATION

SECTION 8.01 INSURANCE

- A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits as hereinafter stated, insuring against the liabilities set forth in this Section.
- B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and motor vehicle liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance policies shall contain an endorsement providing that City will be given not less than sixty (60) calendar days written notice prior to the cancellation or material adverse change of the provisions or coverages affecting the interest of City provided by said policies. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.
- C. Airline shall cause a copy of the policy(s) of insurance to be furnished to City within thirty (30) days from the effective date of this Agreement, evidencing such insurance coverage. If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the reestablishment of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline.
- D. The minimum limits of coverage shall be as follows:
1. Airline, at its own expense, shall procure and maintain for the benefit of City and itself, as their respective interests shall appear, all insurance required herein with insurance underwriters authorized to do business in the State of Texas, satisfactory to City and with the minimum limits established herein.
 2. Comprehensive motor vehicle liability policy in a minimum amount of one million dollars (\$1,000,000) for both bodily injury and property damage.

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3. Airport general liability policy or comprehensive general liability policy in minimum amount of ten million dollars (\$10,000,000) combined single minimum amount for both bodily injury and property damage.
 4. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one hundred thousand dollars (\$100,000).
- E. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured throughout the term and any extensions of this Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, or resulting from the negligent work, operations, or omissions of Airline, its officers, agents, employees, invitees, and independent contractors on the Airport. Airline may show City as an additional insured with respects to Airline's operation at the Airport, provided, that Airline shall then also show on the insurance policy that liability insurance coverage also includes contractual liability.
- F. Any and all of the above insurance coverages shall be on an "occurrence" basis, not on a "claims made" basis.
- G. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations at the Airport.

SECTION 8.02 INDEMNIFICATION

- A. **WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, AIRLINE AGREES TO INDEMNIFY AND HOLD CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF AIRLINE'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF AIRLINE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF AIRLINE, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST CITY BY REASON OF ANY SUCH CLAIM, AIRLINE, UPON RECEIPT OF**

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WRITTEN NOTICE FROM CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO CITY.

- B. Airline agrees to require all independent contractors that enter the Airport to perform work for, or to supply to, Airline to maintain liability insurance coverage.
- C. Except as provided above, Airline agrees to assume all risks of loss to its property resulting from any fire, theft, and/or vandalism, occurring on the Leased Premises.

SECTION 8.03 NON-LIABILITY OF CITY

City shall not in any event be liable for any acts or omissions of Airline, its officers, agents, employees, invitees and independent contractors, or for any conditions resulting from the operations or activities of any such lessee, tenant, or concessionaire, Airline officers, agents, employees, invitees, or independent contractors, or for any conditions resulting from the operations or activities of Airline's officers, agents, employees, invitees or independent contractors either to Airline or to any other person.

City shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof.

SECTION 8.04 RELEASE OF LIABILITY REGARDING CERTAIN DAMAGES

City shall not be liable for, and is hereby released from all liability to Airline, to Airline's insurance carrier, or to anyone claiming under or through Airline for any loss or damage whatsoever to the property or effects of Airline resulting from the accidental discharge or discharge beyond City's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin. The provisions of this Section shall not be construed as a limitation of City's rights pursuant to prior sections, but are additional to the rights and exclusions from liability provided herein.

ARTICLE 9 - ASSIGNMENT OR SUBLEASE

SECTION 9.01 GENERAL

Airline shall not at any time transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Agreement or any part of the Leased Premises. Airline shall not assign its interest under this Agreement or any part of the Leased Premises to any party without prior written approval of City. Any failure of Airline to obtain City's prior approval shall be a material breach of this Agreement.

SECTION 9.02 BANKRUPTCY

The immediately preceding section shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee, or by Airline as a debtor in possession under the Bankruptcy Code of 1978, as amended, provided that adequate assurance of future performance as provided by the Bankruptcy Code of 1978, as amended, is to be provided,

in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rentals, fees, and charges due under this Agreement upon the assumption or assignment of this Agreement;
- B. Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and
- C. The procurement of a bond from a financially reputable surety provider covering any costs or damages which City reasonably estimates City would incur in the event that City, within three (3) years following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the Leased Premises covered by this Agreement under Article 4.

SECTION 9.03 CORPORATE REORGANIZATION

Notwithstanding anything contained in this Article to the contrary, no consent shall be required for any transfer or assignment of Airline's interest in this Agreement by operation of law or otherwise in connection with a merger, consolidation or other corporate reorganizations, or in connection with a sale of all or substantially all of Airline's assets.

ARTICLE 10 - GENERAL PROVISIONS

SECTION 10.01 RULES AND REGULATIONS

- A. Airline shall observe and obey all rules and regulations established, promulgated, or adopted consistent with this Agreement from time to time during the term hereof, by City governing conduct on and operations at the Airport and use of its facilities.
- B. Airline shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Airline's behalf to violate any such rules and regulations.

SECTION 10.02 COMPLIANCE WITH LAW

- A. Airline shall not use the Leased Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances and laws of any City, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Leased Premises.

- B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:
1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.
 2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Leased Premises (subject to prior written approval of City), equipment, and personal property that are required to comply with or conform to any such statutes and ordinances, and regulations which are promulgated or enacted by City.
 3. Be and remain an independent contractor with respect to all installations, construction, and services performed by the Airline or on behalf of Airline hereunder.

SECTION 10.03 NONDISCRIMINATION

Airline, for itself its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
- B. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Airline shall use the Airport in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Airline shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- D. That, in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Agreement had never been made or issued.

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SECTION 10.04 AFFIRMATIVE ACTION

Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from City, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Section. Airline assures that it will require that its covered suborganizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

SECTION 10.05 NOTICES

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A. Any notice under the terms of this Agreement shall be in writing. If such notice is given by Airline, it shall be submitted to

Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1091

or to such revised address as notified by Director. If given by Director, such notice shall be submitted to the address of Airline at the following address:

Pacific Wings, LLC
d/b/a New Mexico Airlines
#1 Kahului Airport Road
Commuter Terminal
Kahului, Hawaii 96737

- B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.
- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth in this Section.

SECTION 10.06 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for

the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time.

SECTION 10.07 NONWAIVER OF RIGHTS

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated shall never be construed to be a waiver of any other or succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of City of any of the provisions herein imposed upon Airline.

SECTION 10.08 FEDERAL AVIATION ACT, SECTION 308

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended or succeeded, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use space leased to Airline under the provisions of this Agreement.

SECTION 10.09 SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there shall be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

SECTION 10.10 HEADINGS

The headings of the articles and 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 hereof or the interpretation or construction thereof.

SECTION 10.11 ASSIGNMENT BY CITY OR OTHER SUCCESSOR IN INTEREST

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with respect to this Agreement and their rights and interests hereunder for any purpose.

SECTION 10.12 REDEVELOPMENT

If this Agreement is terminated as provided herein as a result of physical changes associated with the development of the Airport, Airline waives any and all rights to reimbursements, allowances, loans, or other forms of payment for relocation, rental or any other costs which might apply to tenants in other locations who are required to relocate due to construction of public facilities.

SECTION 10.13 REMOVAL OF DISABLED AIRCRAFT

Airline shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions) and place any such disabled aircraft in such storage area as may be designated by Director. Airline may store such

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disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City.

SECTION 10.14 QUIET ENJOYMENT

City covenants and agrees that Airline on paying the rentals, fees and charges herein provided for and observing and keeping all the covenants, conditions, and terms of this Agreement, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Agreement without hindrance or molestation by City or any person claiming under City.

SECTION 10.15 AGREEMENT SUBJECT TO COVENANTS IN DEED

It is mutually agreed that this Agreement is made subject to the covenants, requirements, and restrictions contained in the Deed by which City obtained title to Airport from the Government of the United States.

SECTION 10.16 FORCE MAJEURE

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

SECTION 10.17 ENTIRE AGREEMENT

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

SECTION 10.18 TIME IS OF THE ESSENCE

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

SECTION 10.19 ATTORNEY'S FEES

If either party brings any action or proceedings to enforce, protect, or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

SECTION 10.20 AGREEMENT MADE IN TEXAS

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

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SECTION 10.21 CUMULATIVE RIGHTS AND REMEDIES

All rights and remedies of City here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by City of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

SECTION 10.22 INTERPRETATION

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

SECTION 10.23 AGREEMENT MADE IN WRITING

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

SECTION 10.24 SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon City and Airline and their successors, assigns, legal representatives, heirs, executors and administrators.

SECTION 10.25 AUTHORIZATION TO ENTER AGREEMENT

Each of the persons executing this Agreement on behalf of Airline warrants to City that Airline is a duly authorized and existing entity, that Airline is qualified to do business in the State of Texas, that Airline has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Airline is authorized to do so. Upon Director's request, Airline will provide evidence satisfactory to Director confirming these representations.

SECTION 10.26 COMPLIANCE WITH ADA AND OTHER DISABLED ACCESS LAWS

Airline agrees that with respect to the Leased Premises, Airline shall be responsible, at Airline's cost, for compliance with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Airline recognizes that City is a public entity subject to Title II of the ADA. To the extent permitted by law, Airline shall assume and be obligated to comply with any obligations to which City may be subject to under Title II of the ADA with respect to any programs, services, activities, alterations, or construction conducted or undertaken by Airline in the Leased Premises. Airline shall also be responsible, at Airline's cost, for compliance with any other applicable disabled accessibility laws, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. §41705), and regulations implementing the ACAA.

SECTION 10.27 MOST FAVORED NATIONS

Each air transportation company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rentals, charges, and fees with respect to facilities or equipment directly and substantially related to providing air transportation as are applicable to all air transportation companies which make similar use of the Airport and which use the same or similar facilities or equipment, subject to reasonable classifications such as tenants or non-tenants and Signatory Airlines or non-signatory airlines. Classification as a

CITY CLERK DEPT.

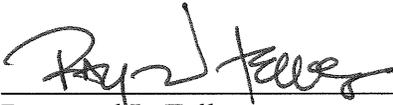
Signatory Airline shall not be unreasonably withheld by the City provided the air transportation company requesting such classification assumes obligations substantially similar to those imposed on other Signatory Airlines.

IN WITNESS WHEREOF, this Agreement has been approved as of the date first noted above.

CITY OF EL PASO

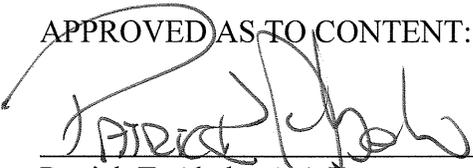
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A.A.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2008, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas**.

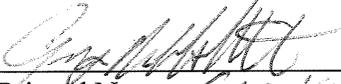
Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON FOLLOWING PAGE] 08 FEB 20 11:40

CITY CLERK DEPT.

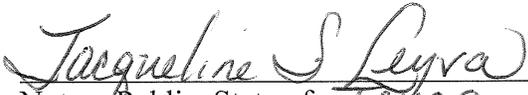
AIRLINE: PACIFIC WINGS, LLC
d/b/a NEW MEXICO AIRLINES


Printed Name: Greg Karlstorf
Title: CEO
Date: 2-21-08

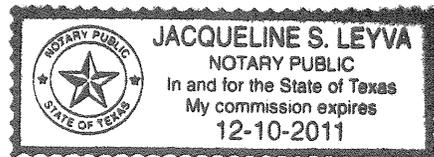
ACKNOWLEDGMENT

THE STATE OF Texas
COUNTY OF El Paso

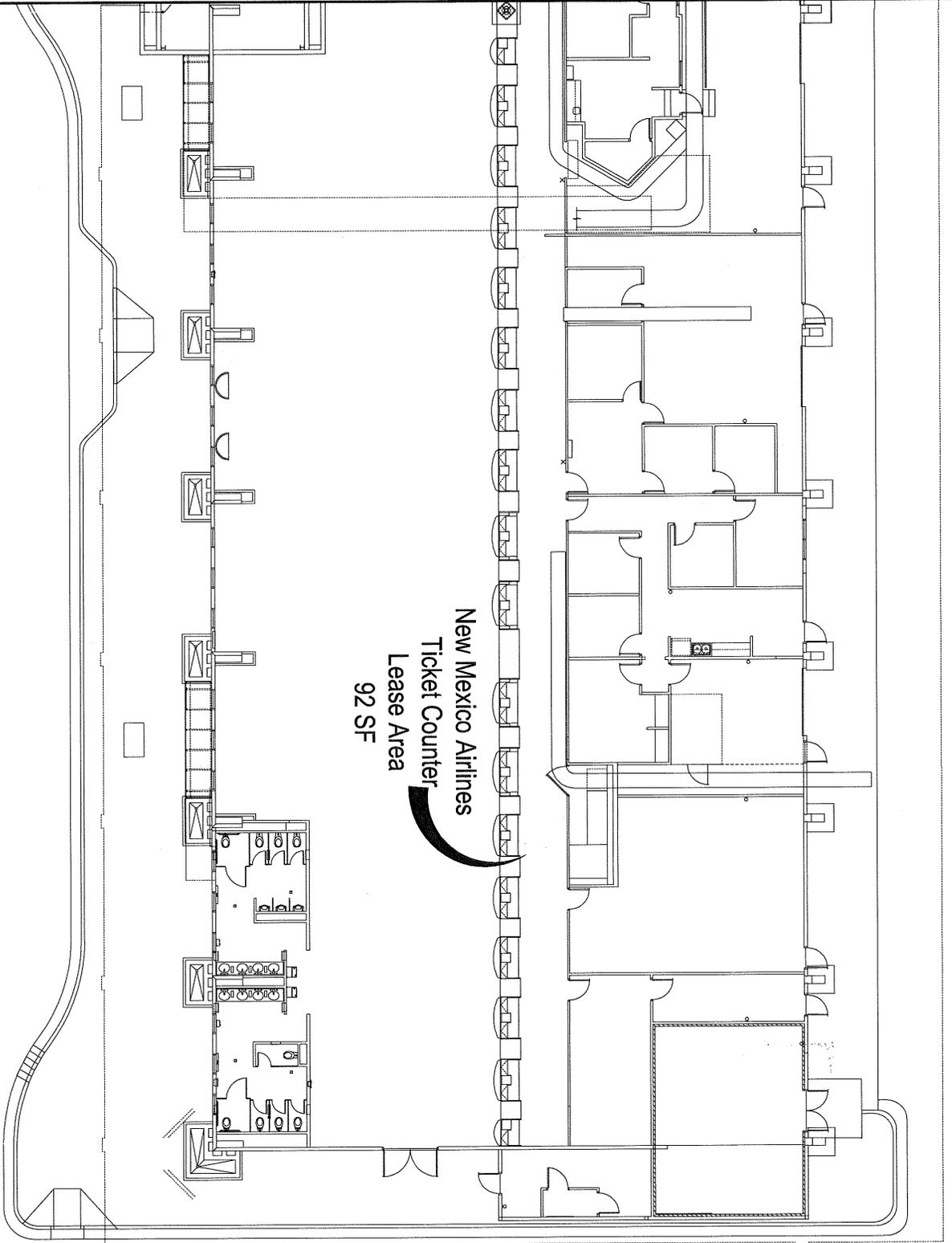
This instrument was acknowledged before me on this 21st day of February, 2008, by James G. Karlstorf, as CEO, of Pacific Wings, LLC d/b/a New Mexico Airlines.


Notary Public, State of Texas

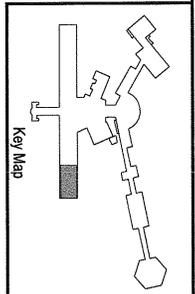
My Commission Expires:
12/10/2011



08 FEB 20 AM 11:40
CITY CLERK DEPT.



New Mexico Airlines
 Ticket Counter
 Lease Area
 92 SF



CITY CLERK DEPT.
 08 FEB 20 AM 11:40



EL PASO INTERNATIONAL AIRPORT
 NEW MEXICO AIRLINES
 AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING
 CERTIFICATED PASSENGER AIRLINE LEASE

Exhibit
 A