

OPERATING AGREEMENT

BETWEEN

SUSQUEHANNA AREA REGIONAL AIRPORT AUTHORITY

AND

AGREEMENT NO: _____

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Sample

THIS OPERATING AGREEMENT (the “Agreement”) effective this _____ day of _____, 2022 by and between the **SUSQUEHANNA AREA REGIONAL AIRPORT AUTHORITY**, a joint municipal authority duly created under the Pennsylvania Municipality Authorities Act of 1945, having an address at One Terminal Drive, Suite 300, Harrisburg International Airport, Middletown, Pennsylvania 17057 (the “OWNER”) and _____ a **Pennsylvania limited liability company**, having an address at **XXXXXX** (the “OPERATOR”).

WITNESSETH:

WHEREAS, OWNER owns and operates the Capital City Airport (the “Airport”) located in Fairview Township, York County, Pennsylvania; and

WHEREAS, the OPERATOR is leasing/subleasing space, and wishes to use this space to operate an XXXXXXXX (the “Operator’s Business”); and

WHEREAS, this Agreement sets forth the terms and conditions under which OPERATOR will conduct Operator’s Business;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, OWNER and OPERATOR agree as follows:

**ARTICLE I
FACILITIES**

1.01 **Use of Facilities.** OPERATOR shall lease or sublease appropriate facilities, as defined in the minimum standards (the “Facilities”), either directly from the OWNER or from an approved tenant at the Airport. Should the OPERATOR be unable to secure a lease or sublease or have a lease or sublease terminated, then this Agreement and all rights and privileges of OPERATOR associated with this Agreement will terminate without further action of OWNER required. OPERATOR shall use the Facilities exclusively the Operator’s Business at the Airport and for no other commercial purpose without the prior written consent of the OWNER, which consent the OWNER may grant or deny in its sole discretion.

1.02 **Prohibited Activities.**

- (a) Subject to the terms hereof, OPERATOR shall not permit the loading, unloading or storage of any hazardous materials, substances or objects in or at the Facilities in violation of any applicable federal, state or local law, regulation, ordinance, ruling and/or health and safety standards. In no event shall OPERATOR handle any materials which would adversely affect the insurance coverage of the Airport maintained by the OWNER, a description of which coverage shall be provided to OPERATOR upon request.
- (b) Subject to the terms hereof, OPERATOR shall not store fuel, shall not block a taxiway, and shall not park any aircraft upon the Airport in such a location as

to interfere with Airport operations. All parking of automobiles and trucks operated by officers, employees and business invitees of OPERATOR is prohibited on the secure portion of the Airport.

ARTICLE II OPERATION AUTHORIZATION AND USE OF FACILITIES

2.01 **Grant of License.** OWNER hereby grants to the OPERATOR the non-exclusive license to OPERATOR to conduct aircraft maintenance at the Airport, subject to the terms and conditions of this Agreement. It is specifically understood and agreed by the OPERATOR that nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right to operate its Business at the Airport. OPERATOR may not conduct any other commercial activity at the Airport without the prior written consent of the owner.

2.02 **Price Lists and Handling Agreement.** OPERATOR's price lists of any charge for sales or services by OPERATOR to third parties under the terms of this Agreement shall be furnished by OPERATOR to OWNER within three (3) days of OWNER's written request. OWNER shall have the right to require OPERATOR to reduce any charge on the Fee Structure if such charge exceeds by more than ten percent (10%) the average fee determined by OWNER by averaging the fee charged for such goods and services at similar businesses within a 30 mile radius of the Airport. Within ten (10) days of OWNER's determination of the average fee determined as aforesaid, OPERATOR shall implement such average fee at the Airport.

ARTICLE III TERM

3.01 **Term.** The initial Term of this Agreement shall be for one (1) year, commencing upon the date hereof (the "Commencement Date") and terminating at 11:59 pm EST, on the last day of the twelfth (12th) month following the Commencement Date (the "Termination Date").

3.02 **Renewal Terms.** Provided that the OPERATOR is not in default under the terms and conditions of this Lease, and provided that the OPERATOR meets the requirements in the Minimum Standards, the Initial Term shall automatically extend on a monthly basis, unless either OPERATOR or OWNER shall notify the other party in writing no later than thirty (30) days prior to the expiration of the then current term, that it has elected not to renew the term of this Agreement.

ARTICLE IV FEES AND CHARGES

4.01 **Fee to OWNER.** As consideration for the rights granted to OPERATOR under this Agreement, OPERATOR agrees to pay to OWNER, without notice, set off, deduction or demand, on or before the fifteenth (15th) day of each month during the Term of this Agreement and on the month immediately following the termination or expiration of this Agreement, a fee (the "Fee") in an amount equal to three and one-half percent (3½%) of the total gross revenues of OPERATOR from Operator's Business at the Airport for the immediately preceding calendar month. Total gross revenues shall mean the aggregate amount, expressed in dollars, paid to OPERATOR for its goods and services, whether made at full or discount prices, or for cash or for credit, resulting from or arising out of the flight school services rendered by the OPERATOR at the Airport. Occupancy, sales tax and similar taxes which the OPERATOR is required to collect and remit on behalf of a taxing authority (whether state, local or federal) shall not be included in the total gross revenues collected.

4.02 **Payment of Fees.** The Fee and any other payments due and payable by OPERATOR under this Agreement shall be paid in lawful money of the United States of America, without notice, demand or set off, by check made payable to OWNER and delivered to the following address, or to such other address as OWNER may notify OPERATOR in writing, from time to time:

Via Mail/Express

**Susquehanna Area Regional Airport Authority
One Terminal Drive, Suite 300
Middletown, PA 17057**

4.03 **Statements/Record Keeping.**

- (a) OPERATOR will furnish to OWNER, at the address set forth in Section 4.02 above, on or before the fifteenth (15th) day of each calendar month during the Term and on the month immediately following termination or expiration of the Agreement, a statement signed by OPERATOR showing the services rendered and the Total Gross Revenues collected by OPERATOR from the operation of Operator's Business. Each such statement shall show the date upon which OPERATOR performed such services and shall be accompanied by invoices showing the services performed and the total cost of each item. All such monthly statements and other information provided to the OWNER shall be retained by the OWNER for its records. Additionally, OPERATOR shall, within sixty (60) days of the expiration of each calendar year and the expiration or termination of this Agreement, furnish a written statement to OWNER certified by a member or manager of OPERATOR stating that in his or her opinion the Fees paid by OPERATOR to OWNER during the calendar year were made in accordance with the terms of this Agreement. Such statement shall also state the gross revenues as shown on the books and records of the OPERATOR for the preceding year.

(b) OPERATOR agrees to maintain at OPERATOR's office at the Airport, or such other location as OWNER may agree in writing, full and complete records relating to the operation of Operator's Business for the purpose of verification of the OPERATOR's performance under this Agreement and to permit OWNER to inspect and make copies of the same during regular business hours of any regular business day. If OWNER cannot obtain satisfactory records from OPERATOR regarding the operation of Operator's Business, OPERATOR agrees to make reasonable efforts to require OPERATOR's customers, at no cost to OWNER, to produce their books, records and other documents relating to any transaction based on or derived from the Agreement upon request by OWNER, including requiring the customer to produce such records and any written contract with OPERATOR.

4.04 **Delinquent Payment.** Any payment of the Fee and any other sums due to OWNER under this Agreement which is not received by OWNER within five (5) days of scheduled due date shall be subject to a late payment fee of five percent (5%) of the amount of the Fee and/or payment then due and shall accrue interest at the rate equal to the "Prime Rate" as published in the Wall Street Journal, from time to time, plus five percent (5%) (the "Default Rate") from the due date until paid in full. If the Wall Street Journal, ceases to publish the "Prime Rate", then the comparable rate as published in a comparable financial journal shall be used.

4.05 **Bad Checks.** Any check returned due for insufficient funds or for any other reason caused by the OPERATOR shall incur a charge for handling, to be paid by OPERATOR upon proper invoice. This charge shall consist of all identifiable expenses with a minimum charge of fifty dollars (\$50.00) for each such occurrence.

ARTICLE V OBLIGATIONS OF OPERATOR

5.01 **Taxes.** OPERATOR hereby agrees and acknowledges that it shall pay, when due, all taxes, assessments and/or fees, which are legally assessed or levied on Operator's Business by any governmental authority at any time during the Term.

5.02 **Trash Removal.** The OWNER shall not be responsible for the disposal of trash generated by the OPERATOR's business. The OPERATOR is encouraged to participate in a recycling program in accordance with local ordinances. The piling of boxes, cartons, barrels, pallets, debris or similar items in an unattractive or unsafe manner on or about the Facilities, shall not be permitted.

ARTICLE VI OTHER COVENANTS OF OPERATOR

6.01 **Nondiscrimination.** OPERATOR covenants and agrees (i) that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Facilities or the operation of Operator's Business; (ii) that in the construction of any improvements and the furnishing of services on the Facilities no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (iii) that OPERATOR shall use the Facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, 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 may be amended from time to time, to the extent that the requirements are applicable to OPERATOR.

6.02 **Civil Rights.** OPERATOR covenants and agrees that it will comply with all federal, state, and local laws, ordinances, rules, regulations, and orders, now or hereafter in effect or promulgated, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted on the Facilities.

6.03 **Affirmative Action.** With respect to the Facilities, OPERATOR covenants and agrees that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E; that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by that Subpart; and that it will require that its covered suborganizations provide assurance to OPERATOR that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect and to the extent that said requirements are applicable, as a matter of law, to OPERATOR.

6.04 **Observance of Statutes.** The granting of this Agreement and its acceptance by OPERATOR is conditioned upon OPERATOR observing and complying, and OPERATOR covenants and agrees to observe and comply, with (i) all federal, state or local statutes, ordinances, regulations, and health and safety standards applicable to OPERATOR and the Public Facilities Concession Regulation Act, Act No. 315 of 1978, (ii) with all rules and regulations, promulgated from time to time by OWNER for the administration of the Airport, and/or any governmental agency or body having jurisdiction over the Airport, specifically including, without limitation, OWNER's Master Security Plan and/or Transportation Security Administration's security regulations, and (iii) all applicable Minimum Standards established by OWNER from time to time.

6.05 **Copies of Inspections and Reports.** OPERATOR covenants and agrees that it shall provide to OWNER copies of any inspections or reports which are conducted by or for any federal, state or local government in connection with the Facilities or Operator's Business immediately upon OPERATOR's receipt or preparation thereof. Additionally, OPERATOR covenants and agrees to provide to OWNER, immediately upon receipt, copies of any

correspondence, notice, pleading, citation, indictment, complaint, order, decree or other document from any source which may have an adverse effect on the business of the OPERATOR or the Airport.

ARTICLE VII OBLIGATIONS OF OWNER

7.01 **Operation as a Public Airport.** OWNER covenants and agrees that at all times it will operate and maintain the Airport, except as limited by applicable laws, ordinances, regulations, rulings and other governmental requirements, as a public airport consistent with and pursuant to the Sponsor's Assurances given by OWNER to the United States Government pursuant to federal statutes and law.

7.02 **Ingress and Egress.** OWNER shall have the right of ingress to and egress from the Facilities for OPERATOR, its officers, employees, agents, customers, vendors, and invitees over the roadways provided by OWNER serving the Airport. OWNER's roadways shall be used jointly with other tenants on the Airport. OPERATOR shall not interfere with the rights and privileges of other persons or firms using the roadways and shall be subject to such rules and regulations as may be established, from time to time, by OWNER and/or other governmental authorities having jurisdiction over the Airport.

7.03 **Security Agreement.** OWNER shall not be responsible to provide, or cause to be provided, any security protection during the Term of this Agreement. OPERATOR shall have the right, but shall not be obligated to provide, such security protection as it may desire at its own cost. Such right, whether or not exercised by OPERATOR, shall not in any way be construed to limit or reduce the obligations of OPERATOR hereunder. Any such security protection shall be subject to the authority granted to OWNER's police department.

ARTICLE VIII OWNER'S RESERVATIONS

8.01 **Improvement, Relocation or Removal of Structures.** OWNER, at its sole discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, including the right to remove or relocate any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions.

8.02 **Subordination to U.S. Government.** This Agreement shall be subordinate to the provisions of any existing or future agreement(s) between OWNER and the United States, 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 OWNER for Federal funds for the development of the Airport.

8.03 **War or National Emergency.** During the time of war or national emergency, and if required by the United States Government, OWNER shall have the right to lease the Airport or any part thereof to the United States Government or allow the United States Government use the Airport or any part thereof, for military use.

ARTICLE IX ENVIRONMENTAL LAWS

9.01 **OPERATOR's Compliance.** OPERATOR covenants and agrees (i) to comply with all applicable environmental laws, (ii) not to discharge, dump, spill, handle or store at the Airport any hazardous substances, materials, or wastes (as defined in any environmental law, as defined below), (iii) not to disturb the surface of the Airport (except as approved in writing by OWNER), and (iv) to provide to OWNER, immediately upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree or other document from any source asserting or alleging a circumstance or condition which requires, or may require, a clean-up, removal, remedial action, or other response by or on the part of OPERATOR under environmental laws or which seeks criminal or punitive penalties from OPERATOR for an alleged violation of environmental laws. Regardless of the foregoing, OPERATOR may handle and store hazardous substances and materials at the Facilities as may be customarily handled and stored in connection with Operator's Business, so long as such substances and materials are stored and handled in accordance with all environmental laws (as defined below). OPERATOR further agrees to advise OWNER in writing as soon as OPERATOR becomes aware of any condition or circumstance which may result in a potential violation of any environmental laws. This provision shall not relieve OPERATOR from conducting its own environmental audits or taking any other steps necessary to comply with environmental laws. In no event shall OPERATOR be responsible for any costs, liabilities, or damages suffered by OWNER for environmental hazards that OPERATOR did not create, nor shall OPERATOR be responsible for any environmental hazard that is discovered during the period of OPERATOR's occupation of the Facilities that was not caused by any act or omission by OPERATOR and OWNER shall indemnify and hold harmless OPERATOR for any such costs, liabilities or damages.

9.02 **Handling and Storing Hazardous Substances, Materials or Wastes.** Where approved in accordance with the provisions of Section 9.01, handling and storing of hazardous substances, materials and wastes, such as flammable liquids and solids, corrosive liquids, compressed gasses and magnetized or radioactive materials may be accomplished only (i) by designated personnel, (ii) with assurance from the shipper that the cargo can be handled safely, including any special handling procedures required for safety, and (iii) with provisions made for specific areas for storage while on the Airport. Regardless of the foregoing, OPERATOR shall advise OWNER, in writing, at least annually, of the approximate quantity and the storage location of all containers of hazardous materials located at the Facilities and shall provide Material Safety Data Sheets for all hazardous substances or materials stored by OPERATOR at the Airport. OPERATOR shall promptly provide OWNER with updated information and reports on any changes in the type, quantity or location of any hazardous materials or hazardous substances at the Airport.

9.03 **OPERATOR's Remediation.** If in the reasonable opinion of OWNER, there exists any uncorrected violation by OPERATOR of an environmental law or any condition resulting from

the acts or omissions of OPERATOR, or its officers, partners, employees, agents, contractors or invitees which requires, or may require, a cleanup, removal or other remedial action (the "Remedial Action") by OPERATOR under any environmental laws and if the Remedial Action is not completed by OPERATOR within ninety (90) days from the date of written notice from OWNER to OPERATOR, OWNER may declare an event of default hereunder; provided that if violation reasonably cannot be mitigated within ninety (90) days from the date of the written notice and OPERATOR promptly commences and thereafter diligently pursues the completion of the mitigation, then the ninety (90) day period shall be extended until the mitigation is completed.

9.04 **Environmental Law Definition.** For the purposes of this Article, the term "environmental law" shall mean all federal, state and local statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the environment or hazardous substances, materials or wastes including, but not limited to, the Pennsylvania Hazardous Sites Clean-Up Act of 1988, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980 as amended by the Superfund Amendments and Re-authorization Act of 1986, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency.

9.05 **Indemnification of OWNER.** To the fullest extent permitted by law, OPERATOR agrees to indemnify, hold harmless and defend OWNER (the "Indemnified Party") from and against all claims and actions and all expenses incidental to the investigation and defense thereof, including reasonable litigation expenses and attorneys' fees, based on or arising out of damages or injuries to persons or their property, resulting from OPERATOR, or its officers, partners, agents, employees, contractors or invitees violating provisions of this Article IX. The Indemnified Party shall give to OPERATOR prompt and reasonable notice of any such claim or action, and OPERATOR shall have the right to investigate, compromise, and defend the same.

9.06 **Inventory of Hazardous Substances.** OPERATOR covenants and agrees to provide to OWNER a report, within twenty (20) days of the Commencement Date and on each yearly anniversary of the Commencement Date, which lists all hazardous substances, materials or wastes (as defined in any environmental law) which are handled and/or stored at the Facilities by the OPERATOR in connection with Operator's Business. During any Agreement Year, OPERATOR covenants and agrees to advise the OWNER of any additions or subtractions to the hazardous substances, materials or wastes listed in such report, as well as any events which are required to be reported to any governmental OWNER.

ARTICLE X AIRPORT SECURITY

10.01 **Airport Security.** As a licensee and user of the Airport, OPERATOR shall comply with all applicable existing and future security rules that may apply to the Airport and as from time to time, created and enforced by the Federal Administration Aviation or the Transportation Security Administration. OPERATOR shall take reasonable steps to monitor and protect the portions of the Airport accessed by aircraft from entry by unauthorized personnel.

10.02 **Independent Contractor.** It is agreed that in accepting and carrying out the security procedures set forth herein, OPERATOR shall be an independent contractor in every respect, and shall not be considered, nor hold itself out as, an agent of OWNER.

10.03 **Evaluation.** From time to time, OWNER may evaluate OPERATOR's compliance with the security procedures set forth in this Article X. Failure by OPERATOR to fully implement and comply with said procedures will, at the OWNER's option, be considered a Default under this Agreement.

ARTICLE XI INSURANCE

11.01 **Operator's Coverage.** OPERATOR, at OPERATOR's sole cost and expense, shall maintain and keep in effect throughout the Term:

- (a) **Aircraft Liability.** OPERATOR shall maintain aircraft liability insurance on an occurrence basis to include any Owned, Hired and Non-Owned aircraft operated at the airport with limits not less than bodily injury and property damage combined single limit of \$1,000,000 per occurrence, but with bodily injury and property damage limited to \$100,000 per person.
- (b) **Aviation General Liability (including Premises-Operations, Independent Contractors, Products/Completed Operations, Personal Injury and Broad Form Property Damage).** OPERATOR shall maintain aviation general liability insurance with the following limits:
 - (1) General Aggregate: \$2,000,000
 - (2) Each Occurrence: \$2,000,000
 - (3) Personal & Advertising Injury \$1,000,000
 - (4) General Aggregate Limit must apply on a Per Location Basis
 - (5) Policy does not include restrictive Endorsement CG 24 26 (Amendment of Insured Contract)
- (c) **Property Insurance:** OPERATOR shall maintain insurance coverage upon all personal property, stock, leasehold improvements and trade fixtures of OPERATOR and the personal property of others kept, stored or maintained on the Facilities on a "Special Cause of Loss" property insurance form, for the full replacement cost thereof.
- (d) **Workers' Compensation and Employers Liability:** OPERATOR shall obtain and continuously maintain in full force and effect worker's compensation and employer's liability insurance with statutory benefits, voluntary compensation coverage and employer's liability limits in accordance with the requirements of the Pennsylvania law. The coverage

shall Also include Wavier of Right to Recover From Others Endorsement (WC 00 03 13) where permitted by state law, naming OWNER (and any other parent, subsidiary or affiliated entities) and amended to apply to contracts under which the OPERATOR is not performing work

11.02 **Insured Parties.** To the fullest extent permitted by law, OWNER (and any other parent, subsidiary or affiliated entities and Mortgagees, including their agents, employees, representatives, officers, directors, stockholders, partners, members and managers shall be added/included as Additional Insureds on all liability policies described above, even for claims regarding their sole negligence. The coverage offered to the Additional Insureds on OPERATOR'S liability policies shall be primary coverage to any other coverage maintained by the Additional Insureds and shall not permit or require such other coverage to contribute to the payment of any loss.

11.03 **Insurers' Replacement.** Each policy shall provide that it shall not be cancelable without at least thirty (30) days' prior written notice to OWNER and each policy shall be issued by an insurer with an AM Best Rating of "A-" or Higher , AM Best Financial Size Category of Class VII or Higher and licensed to do business in the Commonwealth of Pennsylvania. Forthwith upon the execution of this Agreement, each policy (or a duplicate original thereof) shall be delivered by OPERATOR to OWNER. At least thirty (30) days before any policy shall expire, OPERATOR shall deliver to OWNER a replacement policy meeting the foregoing requirements, and at least ten (10) days prior to the date that the premium on any policy shall become due and payable, OPERATOR shall cause OWNER to be furnished with satisfactory evidence of its payment. Each policy shall be in such form as OWNER may from time to time reasonably require.

11.04 **Evidence of Payment.** If OPERATOR shall fail, refuse or neglect to obtain such insurance or maintain it, or to furnish OWNER with satisfactory evidence that it has done so and satisfactory evidence of payment of the premium of any policy, within the time required as set forth above, OWNER shall have the right, at OWNER's option and without regard to any opportunity to cure provided for elsewhere in this Agreement, to purchase such insurance and to pay the premiums thereon or to pay the premiums on insurance which OPERATOR should have paid for. All such payments made by OWNER shall be recoverable by OWNER from OPERATOR on demand as additional Rent hereunder.

11.05 **Uninsured Loss.** If OPERATOR fails to provide and keep in force insurance as aforesaid, OWNER shall not be limited in the proof of any damages which OWNER may claim against OPERATOR to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but OWNER shall also be entitled to recover as damages for such breach the uninsured amount of any loss, to the extent of any deficiency in the insurance required by the provisions of this Agreement, and damages, expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when OPERATOR shall have failed to provide or keep in force insurance as aforesaid.

11.06 **Other Insurance Obtained by Operator.** OPERATOR shall not take out separate insurance concurrent in form or contributing, in the event of loss, with that required hereunder to be

furnished by OPERATOR, or increase the amounts of any then existing insurance by securing an additional policy or additional policies, unless such separate insurance or additional policy(s) shall conform to all the requirements of this Article XI.

11.07 **Blanket Policy.** OPERATOR may carry any insurance required by this Article XIII under a blanket policy for the risks and in the amounts required pursuant to this Article XIII, provided that all requirements of this Article XIII shall be complied with in respect of such policy.

11.08 **Waiver by Operator.** OPERATOR agrees that OWNER shall not be liable for and hereby releases OWNER from (i) any injury to the Operator's Business or any loss of income therefrom or for damage to any machinery or equipment or other property of OPERATOR, OPERATOR's employees, invitees, customers; (ii) the loss of or damage to any property of OPERATOR by theft or otherwise; or (iii) any injury or damage to property resulting from fire, steam, electricity, gas, water, rain or snow, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or HVAC systems or lighting fixtures, or from any other case whatsoever (whether similar or dissimilar to those above specified), whether the said damage or injury results from conditions arising on the Airport, or from other sources or places.

11.09 **Increase in Insurance Premiums.** OPERATOR will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Facilities or the Airport which will violate OPERATOR's policies of hazard or liability insurance or which will prevent OPERATOR from procuring such policies in companies acceptable to the OWNER. If anything done, omitted to be done or suffered by OPERATOR to be kept in, upon or about the Airport shall cause the rate of fire or other insurance on the Airport or any portion thereof to be increased beyond the minimum rate from time to time applicable to the Airport or any portion thereof for the use or uses made thereof, OPERATOR will pay the amount of any such increase upon OWNER's demand.

ARTICLE XII INDEMNIFICATION

12.01 **Owner's Indemnification.** To the fullest extent permitted by law, OPERATOR agrees to indemnify, hold harmless and defend OWNER from and against any and all claims, costs, expenses (including reasonable attorney's fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind, including all reasonable expenses for which the OWNER may be held liable by reason of injury (including death) to any person (including OPERATOR'S employees) or damage to any property of whatsoever kind or nature arising out of or in any manner connected with OPERATOR'S operations (including, but not limited to, OPERATOR'S use or occupancy of Premises, Ingress or Egress to the Premises, access or use of parking lots, walkways or common areas and any alterations or work done in or about the Premises by the OPERATOR or on the OPERATOR'S behalf, even for and if caused in whole or in part by any negligence, act, omission, or strict liability of the OPERATOR, its agents, representatives, employees, contractors or invitees), asserted by or on behalf of any person, entity or governmental agency or body arising, directly or indirectly, out of the OPERATOR'S Business or other activities conducted on the Airport or occurring in, on or about the Facilities or any part thereof during the Term of this Agreement or

arising directly or indirectly from any act or omission of OPERATOR, or its respective servants, agents, employees, contractors, invites or licensees, and from and against any and all costs, expenses and liabilities incurred in connection with any such claim or proceeding brought thereon, including reasonable attorney's fees, and OWNER shall not be liable to OPERATOR on account of OPERATOR's acts or omissions or in any way arising out of this Agreement, including, without limitation, any failure by OPERATOR to comply with any statute, ordinance, regulation, order or health and safety standard of any governmental agency or body or any accident, death or personal injury or damage to or loss or theft of property. It is expressly understood and agreed that the indemnity and defense contained in this paragraph covers claims by OPERATOR'S employees and that OPERATOR expressly waives any defense to this indemnification obligation which may arise under the Workers' Compensation Act of any State.

The obligations of the OPERATOR to maintain Insurance and provide Indemnification shall survive any termination of this Agreement it being agreed that such rights and obligations are and shall be of a continuing nature and effect.

ARTICLE XIII DEFAULTS AND REMEDIES

13.01 Operator's Default.

- (a) Events of Default. Any one or more of the following events shall constitute an "Event of Default":
- (i) The failure of OPERATOR to pay the Fee or other sum due to OWNER by the earlier of (A) within five (5) days of the OWNER's written notice that such Fee or other sum is due and owing; provided that OWNER shall not be obligated to give the OPERATOR notice of late payments more than two (2) times in any twelve (12) month period, and on the third time a payment is late it shall be an immediate Event of Default without notice or grace period.
 - (ii) Default by OPERATOR in the performance or observance of any covenant or agreement of this Agreement (other than a default involving the payment of money) which default is not cured within thirty (30) days after the giving of written notice thereof by the OWNER, except for any breach of OPERATOR'S obligations or covenants under Articles X and XI, which shall result in an Event of Default if such breach is not cured within two (2) business days after the giving of written notice thereof by OWNER; provided, however, that OWNER shall not be obligated to give the OPERATOR notice of a default more than one (1) time in any twelve (12) month period, and if the same default occurs a second time within the same twelve (12) month period, it

shall be an immediate Event of Default without OWNER giving any notice.

- (iii) The sale of OPERATOR's assets under attachment, execution or similar legal process, or if OPERATOR is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law or an order for relief is entered against OPERATOR under the Federal Bankruptcy Code and such adjudication or order is not vacated within ninety (90) days, except, however for a reassignment of this Agreement to a new operator, with prior approval by OWNER.
 - (iv) The commencement of a case under any chapter of the Federal Bankruptcy Code by or against OPERATOR or any guarantor of OPERATOR's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of the OPERATOR or any such guarantor as bankrupt or insolvent, or the reorganization of OPERATOR or any such guarantor, or an arrangement by OPERATOR or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than OPERATOR or any such guarantor and is withdrawn or dismissed within ninety (90) days after the date of its filing.
 - (v) The admission in writing by OPERATOR or any such guarantor of its inability to pay its debts when due.
 - (vi) The appointment of a receiver or trustee for the business or property of OPERATOR or any such guarantor, unless such appointment shall be vacated within ninety (90) days of its entry.
- (b) OWNER's Remedies. Upon the occurrence of an Event of Default, OWNER shall have the right (in addition to all other rights and remedies at law and in equity), in its sole discretion and at its option, may, by providing OPERATOR with written notice (a) terminate this Agreement and (b) revoke the OPERATOR's privilege to conduct its Operations at the Airport. In such an event, OPERATOR shall have no right to reinstate its rights under this Agreement or to conduct its Operations at the Airport by payment of the Fee or other sums of money due or other performance of the terms and conditions hereof.
- (i) Expenses. In the event that OWNER commences suit for the recovery of Fees or any other amount due under the provisions of this Agreement, or because of the breach of any other covenant herein contained on the part if

OPERATOR to be kept or performed, OPERATOR shall pay to OWNER all reasonable expenses incurred in connection therewith, including reasonable attorneys' fees.

13.02 **Owner's Default**. If OWNER should default in the performance of any provision, covenant, condition or obligation on its part to be performed under this Agreement, and such default is not cured or commenced to be cured (and diligently prosecuted to completion thereafter) within sixty (60) days after written notice from OPERATOR to OWNER to that effect, OPERATOR may, at its option, perform the same at the expense of OWNER. OPERATOR shall then have the right in that event to deduct its reasonable and documented costs and expenses (including reasonable attorney's fees) incurred by it by reason of any such default of OWNER under this Agreement against the next ensuing Fee or other amounts due hereunder until it has been fully reimbursed for same. Regardless of the foregoing, if OWNER's default materially impairs the business Operations of OPERATOR, OPERATOR shall, upon the expiration of the aforesaid sixty (60) day cure period and OWNER having failed to cure (or to commence to cure and diligently pursue thereafter) during such sixty (60) day period, give OWNER a second notice of default and state therein that OWNER's failure to timely cure the default (or commence to cure and diligently pursue) is materially interfering with the OPERATOR's Operations. OWNER shall then have a period of fifteen (15) business days from the receipt of the second notice to take action to cure the default. If OWNER fails to cure the default within the fifteen (15) business day period, OPERATOR shall have the right to terminate this Agreement.

ARTICLE XIV ASSIGNMENT

OPERATOR shall not convey, mortgage, encumber, grant right of first refusal, or assign this Agreement or any interest herein in any manner whatsoever or assign any of the privileges recited herein without the prior written consent of OWNER, which OWNER may grant or deny in OWNER's sole discretion. In the event of the consent of OWNER to an assignment, OPERATOR shall remain fully liable to OWNER for the remainder of the Term of the Agreement for all obligations of "OPERATOR" under this Agreement, unless otherwise agreed to in writing by the OWNER, including but not limited to the obligation to pay to OWNER the Fee and any other sums when due. OWNER may assign, pledge or take other appropriate action with respect to this Agreement and its rights and interests hereunder for any purpose relating to the issuance of bonds or other revenue generating devices at its sole discretion.

ARTICLE XV GENERAL PROVISION

15.01 **Non-Interference with Operation of Airport**. OPERATOR, by accepting this Agreement, expressly agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, OWNER reserves the right to immediately and without notice and by force, if necessary, cause the abatement of such interference at the expense of the OPERATOR.

15.02 **Waiver.** The failure or delay on the part of either party to enforce or exercise at any time any of the provisions, rights or remedies in this Agreement shall in no way be construed to be a waiver thereof, or in any way to affect the validity of this Agreement or any part hereof, or the right of the party to thereafter enforce each and every such provision, right or remedy. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. The receipt by OWNER of the Fee or other sums due herein at a time when OPERATOR is in default under this Agreement shall not be construed as a waiver of such default. The receipt by OWNER of a lesser amount than the Fee or other sums due hereunder shall not be construed to be other than a payment on account of the Fee or other sums due hereunder, nor shall any statement on OPERATOR's check or any letter accompanying OPERATOR's check be deemed an accord and satisfaction, and OWNER may accept such payment without prejudice to OPERATOR's right to recover the balance of the Fee or other sums due hereunder or to pursue any other remedies provided in this Agreement.

15.03 **Successor.** The respective rights and obligations provided in this Agreement shall bind and shall inure to the benefit of the parties thereto, their successors and assigns; provided, however, that no rights shall inure to the benefit of any successor of OPERATOR unless OWNER's written consent for the transfer of such successor has first been obtained.

15.04 **Severability.** If any provision of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions thereof shall in no way be effected or impaired and such remaining provisions shall remain in full force and effect.

15.05 **Entire Agreement.** This Agreement contains all of the agreements, conditions, understandings, representations and warranties made between the parties thereto with respect to the subject matter hereof, and may not be modified orally or in any manner other than by an agreement in writing signed by both parties hereto or their respective successors in interest.

15.06 **Interpretation.** In interpreting this Agreement, there shall be no inference, by operation of law or otherwise, that any provision of this Agreement shall be construed against either party hereto. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party drafting or causing this Agreement to be drafted.

15.07 **Attorneys' Fees.** In any action brought by a party for the enforcement of the obligations of the prevailing party shall be entitled to recover interest and its reasonable attorneys' fees.

15.08 **License Fees and Permits.** OPERATOR shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under Federal, State or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

15.09 **Paragraph Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

15.10 **Choice of Law; Consent to Jurisdiction.** This Agreement shall be construed, interpreted, and enforced in accordance with the internal laws of the Commonwealth of Pennsylvania. The parties consent to the exclusive jurisdiction and venue of the Courts of Common Pleas of Dauphin County, Pennsylvania or the United States District Court for the Middle District of Pennsylvania, and such appellate courts that have supervision thereover, in any action brought to enforce, construe or interpret this Lease.

15.11 **Force Majeure.** Neither OWNER nor OPERATOR shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while, or to the extent such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of public enemy, acts of superior governmental OWNER, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible, and which are not within its control. This provision shall not apply to failures by OPERATOR to pay the Fee or other amounts due hereunder, or to make any other money payments when required by this Agreement.

**ARTICLE XVI
NOTICES**

Any notice, demand, request or other instrument which is or may be required or permitted hereunder shall be deemed sufficiently given if delivered (i) in person, (ii) sent by certified mail return receipt requested, (iii) by a nationally recognized overnight carrier services for next business day delivery and addressed to OPERATOR and/or OWNER, as the case may be, as follows:

To OPERATOR:

Attn: _____

With a copy to:

Attn: _____

To OWNER:

Susquehanna Area Regional Airport Authority
One Terminal Drive, Suite 300
Middletown, PA 17057
Attention: Executive Director

With a copy to:

Michael W. Winfield, Esquire
Post and Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101

Either party may change its address by giving notice of such change to the other. All notices shall be deemed given and complete when hand delivered in person or upon a party's receipt (or refusal of acceptance by the party to whom such notice is sent) if sent by U.S. Mail or overnight courier service or such other place as either party shall by written directive designate in the manner herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above mentioned.

ATTEST/WITNESS

**SUSQUEHANNA AREA REGIONAL
AIRPORT AUTHORITY**

By: _____
Timothy J. Edwards, Executive Director

By: _____
Name: _____
Title: _____