

10-R -1326

(Do Not Write Above This Line)

A RESOLUTION
BY TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE
MAYOR TO EXECUTE AN
AGREEMENT TO AMEND AND
EXTEND THE CENTRAL PASSENGER
TERMINAL COMPLEX LEASE
AGREEMENT, AIRPORT USE
AGREEMENT AND HARTSFIELD-
JACKSON ATLANTA
INTERNATIONAL AIRPORT LEASE
WITH AIRTRAN AIRWAYS, INC.; AND
FOR OTHER PURPOSES.

ADOPTED BY

JUL 19 2010

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
 Date _____
 Chair *[Signature]*
 Referred To _____

Committee TRANSPORTATION
 Date 7-14-10
 Chair *[Signature]*
 Action
 Fav, Adv, Hold (see rev. side)
 Other
 Members
[Signatures]
 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action
 Fav, Adv, Hold (see rev. side)
 Other
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Committee _____
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Committee _____
 Date _____
 Chair _____
 Action
 Fav, Adv, Hold (see rev. side)
 Other
 Members _____
 Refer To _____

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Readings
- Consent
- V Vote
- RC Vote

CERTIFIED

CERTIFIED
 JUL 19 2010
 ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
 JUL 19 2010
 Ronda Daughin Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
 JUL 27 2010
[Signature]
 MAYOR

**A RESOLUTION
BY TRANSPORTATION COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT TO AMEND AND EXTEND THE CENTRAL PASSENGER TERMINAL COMPLEX LEASE AGREEMENT, AIRPORT USE AGREEMENT AND HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT LEASE WITH AIRTRAN AIRWAYS, INC.; AND FOR OTHER PURPOSES.

WHEREAS, the City owns and operates Hartsfield-Jackson Atlanta International Airport ("Airport"), located in the Counties of Fulton and Clayton, Georgia, on which there exists certain terminal buildings and concourse buildings and related facilities for the use of airlines engaged in the transportation of persons and property by scheduled and unscheduled aircraft service, such buildings and facilities are referred to as the Central Passenger Terminal Complex ("CPTC"); and

WHEREAS, the City of Atlanta ("City") and AirTran Airways, Inc. ("Airline"), as successor in interest to ValuJet Airlines, Inc. by merger, are parties to an Agreement and Lease of Premises, dated February 19, 1996, and supplemental agreements and amendments thereto ("CPTC Lease") governing Airline's occupancy and use of facilities in the CPTC at Hartsfield-Jackson Atlanta International Airport ("Airport"); and

WHEREAS, the City and AirTran are parties to an Airport Use Agreement ("AUA") for the use of the Airport; and

WHEREAS, the City and AirTran are parties to a Hartsfield-Jackson Atlanta International Airport Lease ("HJAIA Lease"); and

WHEREAS, the City and Airline desire to extend the term of the CPTC Lease, the AUA and the HJAIA Lease for seven years through September 20, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, that the Mayor is authorized to execute on behalf of the City of Atlanta an Agreement to Amend and Extend the CPTC Lease, AUA and HJAIA Lease ("Extension Agreement") and other appropriate documents substantially in the form of the attached Exhibit A.

BE IT FINALLY RESOLVED that said Extension Agreement shall not become binding upon the City of Atlanta, and the City of Atlanta shall incur no obligation or liability thereunder until same has been signed by the Mayor and delivered to AirTran Airways, Inc.

A true copy,

Rhonda Daughin Johnson
Municipal Clerk

ADOPTED by the Atlanta City Council
APPROVED by Mayor Kasim Reed

JUL 19, 2010
JUL 27, 2010



EXHIBIT A

AGREEMENT TO AMEND AND EXTEND CPTC LEASES, USE AGREEMENTS AND CERTAIN OTHER SPACE USE AGREEMENTS

This Agreement (the "Agreement") to Amend and Extend the CPTC Lease (as defined below) and the Airport Use Agreement (as defined below) between AirTran Airways, Inc. ("Airline" or "AirTran") and the City of Atlanta, Georgia (the "City"), and certain related matters, is made by and among Airline and the City as of _____, 2010.

WHEREAS, the City and Airline, as successor in interest to ValuJet Airlines, Inc. by merger, are parties to an Agreement and Lease of Premises, dated February 19, 1996, and supplemental agreements and amendments thereto, (hereinafter collectively referred to as the "CPTC Lease") governing Airline's occupancy and use of facilities in the Terminal Building and Concourses of the Central Passenger Terminal Complex ("CPTC") at Hartsfield-Jackson Atlanta International Airport ("Airport"); and

WHEREAS, the City and Airline entered into a Restated Airport Use Agreement, dated December 22, 2006, and various amendments approved by the City Council and executed by the parties (collectively the "Use Agreement"); and

WHEREAS, the CPTC Lease and the Use Agreement expire on September 20, 2010; and

WHEREAS, the City and Airline desire to extend the term of the CPTC Lease and Use Agreement; and

WHEREAS, the City and Airline desire to amend certain terms and conditions of the CPTC Lease and the Airline Use Agreement; and

WHEREAS, the parties also desire to address certain other matters as specified in this Agreement providing for use of premises at the CPTC by Airline.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt of which is hereby acknowledged, the parties hereby covenant and agree as follows:

ARTICLE I

GENERAL OBLIGATIONS

Section 1.1. Amendments to CPTC Lease and Use Agreement. The City and Airline hereby agree to amend and extend their respective CPTC Lease and Use Agreement in accordance with the terms and conditions of this Agreement.



Section 1.2. Prior Majority-in-Interest Approvals; Future Conflicts of Interest.

- (a) All airline Majority-in-Interest approvals previously granted under the CPTC Lease and Use Agreement shall continue to be valid and in full force and effect during the Extension Period, except to the extent (i) subsequently modified in writing or (ii) inconsistent with the provisions of this Agreement.

- (b) Reference is hereby made to that certain Majority-in-Interest approval received by the City in connection with a Master Plan submitted by the City to the Signatory Airlines in 1999 (the "1999 MII Approval") through a certain voting ballot and attachments (the "1999 Voting Ballot"). The parties recognize that as part of the 1999 MII approval process, the Signatory Airlines approved an implementation process (the "1999 Implementation Process") set forth in an attachment to the 1999 Voting Ballot titled "Attachment C: Review and Implementation Process for MII Approved Projects" pursuant to which an Executive Committee (consisting of the Aviation General Manager and the Chairman of an Airline Steering Committee) was given the authority to make certain binding decisions on the City and the Signatory Airlines. The parties hereby further recognize that the Executive Committee has met and made numerous decisions pursuant to the 1999 Implementation Process that are binding on the parties. The parties hereby confirm and ratify that the actions taken by the Executive Committee pursuant to the 1999 Implementation Process are binding on the City and the Signatory Airlines to the extent approved in documents executed by the Executive Committee representatives (identified as such in the documents) and have not been modified, superseded or repealed by further Executive Committee action, in documents executed by the Executive Committee representative (identified as such in the documents), or MII approvals or any applicable agreement. The parties hereby represent and warrant to each other that they do not know of any actions by the Executive Committee that are beyond the authority granted to the Executive Committee.

- (c) The 1999 Implementation Process shall continue to be valid and effective during the Extension Period.

- (d) In the event that Majority-in-Interest approval is required of a contract subject to competing bids, and a bid is submitted by an entity in which Airline has a material financial interest, Airline, shall abstain from participation in the Majority-in-Interest approval relating to such contract until all other airlines have had the opportunity to submit their ballots (the "Disinterested Airlines"). Once the Disinterested Airlines have submitted their ballots, Airline shall be deemed to have cast their respective ballots in the same manner as the majority in number of the Disinterested Airlines. This same requirement shall apply to each airline having a Majority-in-Interest vote with respect to a bid submitted by an entity in which such airline has a material financial interest. This voting restriction shall not apply with respect to any bid or proposal by the Atlanta Airlines Terminal Corporation ("AATC") or any multi-airline consortium or entity where each



airline has an equal vote if all airlines entitled to a Majority-in-Interest vote shall each waive in writing their approval rights.

Section 1.3. Atrium Concession Dispute. The City and Airline are parties to a dispute (the “Dispute”) between the City and the CPTC Lease Contracting Airlines over whether and to what extent the Contracting Airlines are entitled to a share of concession revenues generated by concessions in the atrium area and obligated for a portion of the costs and expenses for such atrium area, which is located between the North and South Terminal Buildings (the “Atrium Area”). The City and Airline agree to settle and resolve the Dispute as between them on the following basis:

- (a) The City and Airline agree for purposes of this settlement that the Contracting Airlines’ share of Atrium Area past concession revenues under the CPTC Lease is deemed to be \$5.0 million. The City shall pay Airline its allocable share of such \$5.0 million as determined using Airline’s combined average concession revenue credit percentage for the last eight (8) calendar years. Such payment will be made in six (6) equal monthly installments as credits against rent then due and owing and commencing approximately sixty (60) days after Closing. Notwithstanding the forgoing, City reserves the right to accelerate the payment of Airline’s allocable share of any Atrium Area past due concessions revenues.
- (b) The City and Airline agree for purposes of this settlement that the City and Airline hereby release and forever discharge each other of and from any and all claims of any kind or nature whatsoever arising under the Dispute, whether known or unknown, suspected or unsuspected, which the City and Airline ever had, now have or may have in the future resulting from, arising out of or in any way connected to the Dispute, including any claims for costs, expenses or attorneys’ fees in connection with the Dispute.
- (c) Beginning on the date of Closing of this Agreement certain space in the Atrium Area as shown on Exhibit CC in Attachment 6 will be added to the CPTC Lease as Joint Leased Premises and City Reserved Space. Accordingly, Airline thereafter shall bear their proportionate share of imputed annual debt service requirement of \$1,310,026.65, and their proportionate share of operating and maintenance (“O&M”) costs associated with the Joint Leased Premises commencing on the date of payment in full of its allocable share of the \$5 million as provided in 1.3(a) above. On the same date Airline shall also be entitled to their proportionate share of concession credits as provided for elsewhere in the CPTC Lease.
- (d) The above settlement shall not affect the rights or claims of the City and the other Contracting Airlines with respect to such Dispute.

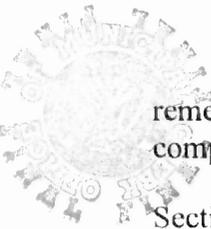
Section 1.4. Submission and Review by FAA; Resolution of FAA Objections. Subject to applicable law and regulations, the City may present the Agreement to the FAA and to seek in good faith the FAA’s confirmation in advance of September 20, 2010, that the Agreement



complies with applicable legal and regulatory requirements. If the FAA at any time provides the City with written notice that certain provisions of the Agreement violate federal law or regulations or will cause the denial or withdrawal of federal funding, the City and Airline shall immediately meet and negotiate in good faith to attempt to resolve such objections in a manner that minimizes the adverse effect on the parties' rights and obligations under this Agreement and the underlying CPTC Lease and Use Agreement. In the event the City and Airline cannot agree on modifications of this Agreement which resolve such FAA objections within sixty (60) days after the receipt of written notice of such objections from the FAA, any party shall have the right to petition the United States District Court for the Northern District of Georgia (or if said court does not have or exercise jurisdiction there-over, then any other court of competent jurisdiction) seeking equitable reformation of this Agreement to most nearly achieve the intent of the parties with respect to this Agreement in a manner that resolves such FAA objections in a manner that minimizes the above-referenced adverse effect. Any party may elect to challenge in any administrative or judicial proceeding any such potentially adverse action, ruling or objection of the FAA.

Section 1.5. Other Airlines. Except as provided in this Agreement, the City may enter into other arrangements or agreements with other Signatory and non-Signatory Airlines as are mutually agreed by the City and such airline or airlines. Nothing in this Agreement shall limit Airline's right under Section 9.35 of the CPTC Lease.

Section 1.6. Dispute Resolution. Except in respect to proceedings in unlawful detainer, in the event of any dispute, claim or controversy arising out of or relating to this Agreement (references in this Section to "Agreement" are deemed to also include the underlying CPTC Lease and Use Agreement) or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this commitment to arbitrate, the parties shall use their best efforts to settle the dispute by negotiation. If they do not reach a resolution within 60 days of written notice by either party of the existence of a dispute, then, upon written notice by either party to the other, all disputes shall be finally settled by arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures ("JAMS Rules") before a single arbitrator. In addition to any discovery permitted under the JAMS Rules and agreed to by the parties, each party to the arbitration may serve written interrogatories and requests for production on the other parties and each party may take up to five (5) depositions. To the extent the JAMS Rules conflict with anything in this provision, this provision governs. The hearing shall be held within six (6) months of JAMS' receipt of written notice of a dispute arising under this provision. The parties intend that a decision be issued within 30 days after the close of the hearing. The place of arbitration shall be Atlanta, Georgia. This Agreement is governed by and all disputes arising under or in connection with this Agreement shall be resolved in accordance with the laws of the State of Georgia. The parties acknowledge that this agreement evidences a transaction involving interstate commerce. The United States Arbitration Act shall govern the interpretation, enforcement and proceedings pursuant to this agreement to arbitrate. The federal courts of the Northern District of Georgia shall have exclusive jurisdiction over any proceedings relating to the arbitration, including entry of judgment on the Award; provided, however, if said court does not have or exercise jurisdiction there over, then relief may be sought in any other court of competent jurisdiction. This clause shall not preclude parties from seeking provisional



remedies in aid of arbitration from the Northern District of Georgia (or from any other court of competent jurisdiction if the Northern District does not have or exercise jurisdiction).

Section 1.7. Support of Bond Offerings. Airline understands and acknowledges that the City has initiated the processes for the issuance, sale and delivery of approximately \$1.390 billion in bonds for the purpose of refinancing existing airport debt (the “Refunding Bonds”) and for new funding for the completion of MHJIT. In consideration of the extension to the terms of the CPTC Lease and Use Agreement pursuant to this Agreement and the other matters addressed in this Agreement, Airline agrees to support these transactions and any additional related financing transactions up to \$1.390 billion until the MHJIT Project is complete and ready for beneficial occupancy; provided, however, that in no event shall Airline have any obligation to make any statement or take any action that it is advised by counsel would constitute a violation of applicable laws. The City shall have the right upon the issuance of the Refunding Bonds, such bonds to have the maximum legally permissible term that does not exceed thirty (30) years (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated there under, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles), to include the annual Refunding Bonds level debt service amortization amount plus a twenty (20) percent coverage in the airlines’ rate base.

Section 1.8. Airline HJAIA Space. In addition to Airline’s CPTC Lease, the City and Airline are parties to a lease dated May 18, 2007, pursuant to which Airline leases certain additional premises at the CPTC (the “HJAIA Lease”). The HJAIA Lease is hereby amended to have a thirty (30) day term that automatically renews through September 20, 2017, unless one party gives the other thirty (30) days written notice of termination. The City agrees that it shall not exercise any such termination right unless Airline is in default under the HJAIA Lease after the expiration of any applicable cure right. Notwithstanding the foregoing, if the City recaptures any Gates under Attachment 2 subsection 3(b) hereto, the City may recapture a proportionate amount of space under the HJAIA Lease upon thirty (30) days written notice and such recaptured space will be deemed not to form a part of the HJAIA Lease. With respect to the HJAIA Lease, the City shall continue to use the same methodology it does now in establishing rentals and other charges.

Section 1.9 Common Use Aircraft Gates with Priority Scheduling and Related Space. The intent of the parties is that through the end of the Extension Period, Airline shall continue to have the right to occupy and use all the Common Use Aircraft Gates with Priority Scheduling and related space that they are assigned pursuant to this Agreement. Airline will not be discriminated against or be provided lesser rights with respect to Common Use Aircraft Gates with Priority Scheduling than other airlines occupying Common Use Aircraft Gates with Priority Scheduling. If the City allows another airline to occupy premises not currently covered by its CPTC Lease on more favorable terms than apply to Common Use Aircraft Gates with Priority Scheduling, Airline shall each have the right to elect to convert its Common Use Aircraft Gates with Priority Scheduling to the same type of leasing arrangement. With respect to any Common Use Aircraft Gates with Priority Scheduling used by Airline, rates and charges shall be determined on the same basis as CPTC Lease Preferential Use Premises.



Section 1.10. Airline Additional Financing; and GAP Projects.

- (a) Subject to the provisions of Section 1.10 (e) below, the City agrees to finance for Airline, the amount reasonably required (but not to exceed \$6.2 million) for upgrades, renovations and the reconfiguration of the aircraft parking areas and gates on Concourse C South and the installation of potable water closets on Gates D4, D5, D11, D13, D14, D15 and D16; such Improvements to be made to Concourses C and D are to provide for the accommodation of additional 737 – 700 aircraft, to improve customer service and operational capability and generally improve the overall space and condition of the facilities. After reimbursement by the City to Airline for the aforementioned improvements, title to such improvements and all related upgrades and renovations shall at all times be held by the City and not by Airline. Airline and the City shall enter into an amendment to incorporate all improvements and renovations into the applicable CPTC Lease as amended hereby; provided however, that the City’s financing obligations are not subject to the execution of such amendment.
- (b) Subject to applicable law and regulations, City agrees to continue to pursue to funding from the Transportation Security Administration (TSA) for the Mega Merge project in the North Terminal Hold Baggage Screening area as more fully described in Attachment 11. In the event that the TSA funding is less than \$1 million, the City will fund the difference between the amount of TSA funding and \$1 million. If the City reasonably determines that the necessary funding for the Mega Merge project exceeds \$1 million, then on or before ninety (90) days after the date of this Agreement, the City will issue a MII ballot for the consideration of the Contracting Airlines to fund any amounts in excess of \$1 million. Airline agrees to fully support and to vote in the affirmative on any MII issued by the City that covers the Mega Merge project. Airline further agrees to pay for its share of costs through its rates and charges that are attributable to any portion of the project in excess of \$1 million as set forth in the MII ballot if such ballot is approved
- The Airline understands and agrees that the City shall not have any responsibility or liability to the Airline in the event that any MII ballot related to the Mega Merge project is not approved by the Contracting Airlines.
- (c) To the extent not vested in the City previously by the terms of this Agreement or law, title to all improvements under Section 1.1(a) above shall vest immediately with City upon the later of DBO or reimbursement.
- (d) Airline recognizes that given the age of the CPTC facility, there are systems, terminal finishes and equipment that must be replaced or repaired during the Extension Period. Accordingly, Airline agrees to cause the Chairman of the Airline Steering Committee to approve on even date herewith the GAP Projects in accordance with the terms hereof and their being implemented in accordance with the 1999 Implementation Process. For the avoidance of doubt, notwithstanding the application of the 1999 MII Implementation Process to the GAP Projects,



Airline shall not disapprove any of the GAP Projects. For each GAP Project, the costs that will be included in the airlines' respective rentals shall not exceed the respective amount shown for the GAP Project in Attachment 8 plus a share of a five percent (5%) contingency of the aggregate GAP Projects amounts (the "Contingency Amount") if and to the extent used for such project. In the event such amount is exceeded, the City may proceed with the applicable GAP Project, but may not include any amount in excess of the GAP Project amount in Attachment 8 Contingency Amount in the airlines' rentals. The GAP Projects shall be financed by GARBS issued specifically for the GAP Projects for a term of not less than thirty (30) years (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated there-under, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles) in the amount not to exceed the amount set forth in Attachment 8, plus the Contingency Amount, capitalized interest and financing costs. Any unused bond amounts shall be used to reduce the amount of such outstanding GARBS. Related rentals for the GAP Projects shall commence as of DBO of the applicable project and will be based on level debt service amortization from DBO through the balance of the maximum scheduled term remaining on related outstanding GARBS plus a coverage factor of twenty percent (20%).

- (e) Not including the amounts in section (a) above, the City has agreed to include certain projects in its proposed 2010 series of general airport revenue bonds to be issued by the City other than the Refunding Bonds and MHJIT Project bonds referenced in Section 1.7 hereof. In the event that market conditions do not permit the City to raise sufficient funds from the issuance of the 2010 series of general airport revenue bonds on commercially reasonable terms to refund (i) all outstanding commercial paper, (ii) the funding of Phase 1 GAP Projects, (iii) the sum of \$69,161,022.00 (the "Additional Amount") and (iv) the financing of amounts in 1.10(a), notwithstanding the City's reasonable efforts to raise such amounts, then (i) the refunding of outstanding commercial paper, Phase 1 GAP Projects and the Additional Amount shall have funding priority over financing of amounts in 1.10(a); provided, however, that with respect to the next series of general airport revenue bonds, the financing of amounts in 1.10(a) shall have priority over any use of proceeds other than the Additional Amounts until payment in full of such amounts. The City agrees to use reasonable efforts to issue the general airport revenue bonds described in the immediately preceding sentence. Upon receipt of proceeds for the financing of amounts in 1.10(a), the City shall make the funding provided in such amendments within thirty (30) days of receiving the funds as outlined above, and will recover said amounts based on airline rates and charges that would be produced by bonds with a term of not less than thirty (30) years (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated there under, or (ii) the maximum permissible term of such bonds in accordance



with generally accepted accounting principles) and amortization from reimbursement through the maximum remaining scheduled term of such bonds, plus capitalized interest and finance costs related to these bonds, plus a coverage factor of twenty percent (20%). Nothing herein shall require the City issue any bonds unless the same are available on commercially reasonable terms.

Should the FAA approve PFC Application 10-12-C-00-ATL which includes reimbursement to the City for costs related to the construction of the Concourse D Gate Additions as defined in the application and if such reimbursement is of an amount sufficient enough to cover the financing requirements outlined in paragraph (a) of this Section 1.10, then City shall provide Airline with financing sufficient to construct the improvements detailed in (a). The City will recover said amounts based on airline rates and charges that would be produced by bonds with a term of not less than thirty (30) years (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated there under, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles) and amortization from reimbursement through the maximum remaining scheduled term of such bonds, plus capitalized interest and finance costs related to these bonds, at an interest rate equal to the 25 Bond Revenue Index Rate (as published by the Bond Buyer) as of the date of the final payment associated with such reimbursement plus a coverage factor of twenty percent (20%).

Section 1.11. Emergency Repairs. Notwithstanding substantial renovations and improvements to the CPTC, airfield and other areas of the Airport during the last thirty years, Airline and City acknowledge that there may on occasion arise emergencies caused by failures of facilities at the CPTC or airfield. For purposes of this Section, emergencies are unplanned, atypical events that must be addressed immediately in order to prevent (i) impairment or failure of a facility or system, (ii) a condition or situation that could halt, hamper, interrupt or prevent Airline or aircraft operations, or (iii) a risk to the public safety; in each case described in clauses (i), (ii) and (iii) above which cannot be prevented or managed on a reasonable basis without making immediate temporary or permanent repairs or improvements. Accordingly, Airline agrees to vote in favor of an MII ballot authorizing an increase in the Airline rate base for charges resulting from expenditures for such emergencies as defined above, subject to the following conditions: (a) the total of all emergency expenditures so authorized shall not exceed \$6 million in any fiscal year; (b) any dispute over whether the expenditure is a reasonably required emergency expenditure shall be subject to the arbitration process of this Agreement; (c) any such emergency expense shall be included in the rate base for all airlines (and the City to the extent it pays costs as if it were a Contracting Airline); and (d) such emergency expenditures up to \$6 million will be financed by the City over a period of ten (10) years at 25 Bond Revenue Index Rate (as published by the Bond Buyer), and will be paid through airline rentals.

1.12 Terms and Provisions of this Agreement Subject to Additional Modification. Reference is hereby made to that certain Agreement to Amend and Extend CPTC Leases, Use Agreements and Certain Other Space Use Agreements by and among Delta Air Lines, Inc., Northwest Airlines, Inc. and the City dated as of December 18, 2009 (the "Delta Extension Agreement"). In the event that the City amends the rental and other charges provisions of the Delta Extension Agreement which by their nature apply formulas and cost allocations designed to apply to other Airlines, on a non-discriminatory basis, and to the extent that the Airline is a party



to these discussions and supports amendment of the Delta Extension Agreement, the City shall notify Airline of such changes and this Extension Agreement shall be deemed to be automatically amended to reflect such changes.

ARTICLE II

AMENDMENT 17 TO CPTC LEASE

Section 2.1. Amendment of CPTC Lease. The CPTC Lease is amended as follows:

- (a) Additional Definitions. Title I of the CPTC Lease is amended to add the following definitions which shall also apply to this Agreement:

“City Reserved Space” shall mean the premises designated on Exhibits C, D, E and Y in Attachment 1 (until September 20, 2010), on Exhibits C, D, E and Y in Attachment 4 (after September 20, 2010) and also on Exhibit YY in Attachment 9 (replacing Exhibit Y effective upon DBO of the MHJIT) for which City will be obligated only for capital costs and actual heating, air conditioning and lighting expenses until such space is leased as Preferential Use Space to one or more Contracting Airlines, MHJIT Lessee Airlines or other tenants, including but not limited to space designated as Department of Aviation vacant space in such Exhibits/Attachments.

“Common Use” shall mean the use of Common Use Gates or other terminal facilities by an airline for its flights and passengers in common with other airlines in accordance with the provisions of the Common Use Regulations.

“Common Use Aircraft Gates with Priority Scheduling” shall mean during the Extension Period any gate, apron area, holdroom, and the associated loading bridge and equipment which Airline shall have the right in advance of all other airlines to use and to schedule its flights as provided in Attachment 2. Wherever in the CPTC Lease the term “Exclusive Use” established an obligation upon or right of Airline or was used for the purpose of calculating the value of the right of, credit to or obligation to be borne by Airline during the Extension Period, Common Use Aircraft Gates with Priority Scheduling shall be substituted with respect to such Common Use Aircraft Gates with Priority Scheduling.

“Common Use Regulations” shall mean the Terminal Common Use Regulations adopted by City of Atlanta Ordinance on May 7, 2007, as they may be revised or supplemented from time to time. The provisions of the Common Use Regulations shall apply to Common Use Premises but not to Common Use Aircraft Gates with Priority Scheduling.

“Concourse Buildings” shall mean the buildings so described on Exhibits B, C, D, E, F and Y in Attachment 1 (until September 20, 2010) and on Exhibits B, C, D, E, F and Y in Attachment 4 (after September 20, 2010), and also on Exhibits YY and ZZ in Attachment 7 (replacing Exhibit Y effective upon DBO of the MHJIT).

“Contracting Airline” or “Signatory” Airline shall mean an entity holding a commercial air carrier operating certificate in good standing with the FAA providing service at the Airport



and signatory to a current CPTC Lease or Use Agreement, an extension of a CPTC Lease or Use Agreement, a new lease or use agreement with terms and conditions regarding Majority-In-Interest approvals and rates and charges provisions substantially similar to the CPTC Lease and Use Agreements as amended herein and having a term of two (2) years or more or any or all of the foregoing; provided that an airline (i) that is only a signatory to a Use Agreement, extension thereof or new use agreement as set forth in this definition, shall only be considered a "Signatory Airline" for purposes of such use agreement or extension thereof and (ii) that is a signatory to a CPTC Lease, extension thereof or new lease agreement as set forth in this definition, shall only be considered a "Contracting Airline" or "Signatory Airline" for purposes of such lease agreement or extension thereof.

"CPI" shall mean the annual average Consumer Price Index for All Urban Consumers, U.S. City Average, All Items and Major Group Figures (1982-84=100) ("CPI-U"), published by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"). If (i) the Bureau ceases to use the 1982-84 average of 100 as the basis of calculation and the Bureau does not recalculate the then applicable CPI-U number for all years including 1982-84, or (ii) the Parties mutually agree in writing that the CPI-U does not accurately reflect the purchasing power of the dollar, or (iii) the CPI-U is discontinued for any reason, then the Parties shall thereafter accept and use such other reasonably comparable consumer price index or other statistics on the cost of living for the United States as shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority selected by both Parties.

"GAP Projects" shall mean the airport-wide projects listed in Attachment 8 and in the Element Level Information Package approved by the Executive Committee of even date hereto, in the not to exceed project amounts specified therein, a copy of which is attached hereto as Exhibit A to Attachment 8.

"GARBS" or "Airport Revenue Bonds" shall mean the general airport revenue bonds issued by the City, from time to time, having a lien on the general revenues of the Airport in accordance with the Restated and Amended Master Bond Ordinance authorizing the issuance of City of Atlanta Airport Revenue Bonds adopted by the City Council on March 20, 2000, as subsequently amended and supplemented. Terms defined in the Bond Ordinance shall have those meanings for the purposes of the Agreement.

"Handling Agreement" means a written agreement between Airline and/or any of their service contractors or by any of them with another airline for any air transportation related services to be provided by any of them or their contractors to the other at or in connection with use of any premises, systems and/or equipment of any airline or the City at the airport, or any airline's operations at, to or from the airport. Such services may include but are not limited to providing, managing and/or handling, some or all of ticketing, passenger check-in, documents verification and other passenger services; baggage handling; cargo handling; mail handling; aircraft positioning, deicing, cleaning, load and balance control and other services; ramp handling; fueling; maintenance; janitorial; security services; skycap services; provisioning; and any other air transportation related services. Such services may be provided at any premises



leased, used or otherwise occupied by Airline, the handling company, the handled company, any handling contractor or another airline.

“MHJIT” or “the Maynard Holbrook Jackson Jr. International Terminal” shall mean the International Terminal Building, Concourse E and Concourse F, together with the associated Aircraft Parking Area and Ramp Area, all as shown on Exhibits YY and ZZ as shown in Attachment 7.

“MHJIT Lessee Airlines” shall mean the airlines who have signed a CPTC Lease or other type of lease with the City for premises in MHJIT.

“MHJIT Project” shall mean the MHJIT construction project.

“MHJIT City Project Costs” shall mean the allocation of MHJIT Project Costs attributable to the MHJIT FIS Facility, and City Reserved Space.

“MHJIT FIS Facility” shall mean with respect to the MHJIT Project:

- a) International Only Passenger Use Area (IOPUA) so designated on Exhibit YY as shown in Attachment 7, and
- b) International/Domestic Passenger Use (IDPUA) so designated on Exhibit YY as shown in Attachment 7, and
- c) International/Domestic Aircraft Ramp Area (IDARA) so designated on Exhibits YY and ZZ as shown in Attachment 7, and
- d) International/Domestic Check-in Area (IDCA) so designated on Exhibit YY as shown in Attachment 7, and
- e) Pre-cleared/Domestic Only Baggage Claim Area (DOBCA) so designated on Exhibit YY as shown in Attachment 7.

“MHJIT Rentable Space” shall mean the sum of the MHJIT FIS Facility space, the MHJIT Lessee Airlines space, City Reserved Space and the Joint Leased Space all as shown on Exhibit YY in Attachment 7.

“MHJIT Users” shall mean all entities, including but not limited to MHJIT Lessee Airlines, Signatory Airlines, charter operators or itinerant aircraft operators, that may utilize any portion of the MHJIT, as shown on Exhibits YY and ZZ in Attachment 7, in any manner and for any act or thing that may be done which is connected with or incidental to the operation of the transportation system of that airline.

“MHJIT FIS Facility Users” shall mean all airlines, including but not limited to MHJIT Lessee Airlines, Contracting Airlines, charter operators or itinerant aircraft operators, that may utilize any portion of the MHJIT FIS Facility, as shown on Exhibits YY and ZZ in Attachment 7, in any manner and for any act or thing that may be done which is connected with or incidental to the operation of the transportation system of that operator.



“Minimum Gate Utilization Standard” shall mean an average of six hundred (600) total departing seats on outbound domestic flights per gate, per day for the previous twelve (12) calendar months.

“Phase 1 GAP Projects” means the GAP projects identified as Phase 1 GAP Projects in Attachment 8.

“Preferential Use Aircraft Gate” shall mean during the Extension Period any gate, apron area, holdroom and the associated loading bridge and equipment as shown on Exhibits B, C and D in Attachment 4, which Airline shall have the right of use as provided in Attachment 2. Wherever in the CPTC Lease the term “Exclusive Use” established an obligation upon or right of Airline or was used for the purpose of calculating the value of the right of, credit to or obligation to be borne by Airline, during the Extension Period, Preferential Use Aircraft Gate shall be substituted with respect to such gates.

“Preferential Use Space” shall mean during the Extension Period space in the CPTC as shown on Exhibits B, C, D, E and Y in Attachment 4 and Exhibit YY in Attachment 7 (replacing Exhibit Y effective upon DBO of the MHJIT), for which the Airline has the right of use as provided in Attachment 2. Such areas may include, but shall not be limited to, ticket counter, queuing, skycap podiums and/or baggage make-up space assignments (excluding airline ticket offices). Wherever in the CPTC Lease the term “Exclusive Use” established an obligation upon or right of Airline or was used for the purpose of calculating the value of the right of, credit to or obligation to be borne by Airline, during the Extension Period Preferential Use Space shall be substituted with respect to such space.

“Priority Scheduling” shall mean the right in advance of all other airlines to use the premises and schedule its flights.

“Terminal Building Area” shall mean the area within the “Terminal Building Area Lease Limits” and as shown in Attachments 1 and 4, as amended by this Amendment 17, in which the Aircraft Parking and Ramp Area, the Concourse Buildings, the Landside Terminal Buildings, the Mechanical Buildings, MHJIT FIS Facility, the pedestrian mall (including the elevators and escalators and associated therewith) and other facilities, including the MHJIT Landside Terminal Building and the associated curb space, are, or will be, situated, but such area shall not include the AGTS or the facilities designated for “MARTA” as shown on Exhibits B, C and Y in Attachments 1 and 4, and Exhibit YY in Attachment 7.

- (b) Extension Term. The lease term set forth in Section 2.01 of the CPTC Lease is extended from September 20, 2010, to September 20, 2017 (the “Extension Period”).
- (c) Leased Premises. The Premises leased by Airline as of the Closing date of this Agreement under the CPTC Leases only are shown on Exhibits B, C, D, E, F and Y in Attachment 1 hereto. Within sixty (60) days of the Closing referenced in Section 4.15 of this Agreement, the parties will in good faith update Exhibits B, C, D, E, F and Y in Attachments 1 and 4 to the extent necessary to correct any errors and variances in actual dimensions, layout or square footages of space



assigned to Airline under the CPTC Leases and then will substitute the updated drawings for Exhibits B, C, D, E, F and Y to the current CPTC Leases. On and after September 20, 2010, the Premises under the CPTC Leases shall be shown on Exhibits B, C, D, E, F and Y in Attachment 4 hereto, which on that date shall replace Exhibits B, C, D, E, F and Y in Attachment 1 hereto.

- (d) A new Section 2.08 is added to the CPTC Lease to read as follows:

Section 2.08 – Assignment of Preferential Use Aircraft Gates.

Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling. For the Extension Period, the parties agree to convert CPTC Lease, permit or other exclusive use ticketing, baggage handling, airline support and passenger holdroom space into Preferential Use Aircraft Gates, Preferential Use Space or Common Use Aircraft Gates with Priority Scheduling based on the requirements outlined in this Agreement and Attachment 2 hereto and as such premises are shown on Exhibits B, C, D and E in Attachment 4 hereto. During the Extension Period, the City is allowed to permit the use of the Preferential Use Aircraft Gates, related Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling and permit the use of such Preferential Use Aircraft Gates or Common Use Aircraft Gates with Priority Scheduling by a Requesting Airline in accordance with the provisions set out in Attachment 2 hereto. In certain circumstances provided for in Attachment 2, the City may also recapture premises and, in addition, provide for accommodation for use by a Requesting Airline, in each case in accordance with the provisions set out in Attachment 4 hereto. Airline shall not be required to provide a Requesting Airline the use of any proprietary systems or information. The City shall not grant any other airline exclusive use rights with respect to any premises without allowing Airline to convert an equivalent proportionate share of its Preferential Use Aircraft Gates and Preferential Use Space or Common Use Aircraft Gates with Priority Scheduling back into exclusive leased premises. References in the CPTC Lease to exclusive leased premises and leased premises shall apply to Preferential Use Aircraft Gates and Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling, including, without limitation, provisions providing Airline with concession revenue credits.

- (e) A new Section TBD is added to the CPTC Lease to read as follows:

Section TBD – MHJIT Project. The MHJIT Project and, once built, MHJIT will be provided for and operated in accordance with the following requirements:

- (a) The maximum share of the capital cost of the MHJIT Project that shall be funded with general airport revenue bonds (“GARBS”) and included in the airlines rates and charges is \$324,500,000 plus capitalized interest and finance costs related to these bonds (the “Cap GARB Amount”). Under no circumstances shall any GARBS be included in the airlines’ rate base



absent MII consent of the CPTC Contracting Airlines that have elected to extend and modify their respective Airport Use Agreements and CPTC Leases consistent with this Agreement in an amount exceeding the Cap GARB Amount or that would result in level debt-service-amortization-based airline rates and charges exceeding charges that would be produced by bonds with a minimum of thirty (30) years term (subject to any limitations (i) on the maximum legally permissible term of such bonds in accordance with the State of Georgia bond laws or the provisions of the Internal Revenue Code and the regulations promulgated there under, or (ii) the maximum permissible term of such bonds in accordance with generally accepted accounting principles) and amortization from DBO through the maximum remaining scheduled term of such bonds, plus capitalized interest and finance costs related to these bonds, at an interest rate not to exceed the lesser of the actual annual interest rate or 7% (the "Maximum Annual Amount") plus a coverage factor of twenty percent (20%).

- (b) The City shall use reasonable efforts to limit total MHJIT Project costs to \$1,358,000,000. Not included in this amount are General and Administrative Expenses, Airline Master Planning Team expenses and capitalized interest costs, which will be allocated as provided in the 1999 MII approval for the International Terminal.
- (c) The MHJIT Project will include an approximately 1,210,000 square foot International Terminal and Concourse F with twelve (12) gates for loading and unloading passenger aircraft, a Federal Inspection Service facility (including associated baggage handling systems), an AGTS extension between the International Terminal and existing Concourse E and the MHJIT related parking deck, roadways, site work and miscellaneous supporting projects and improvements.
- (d) Subject to all requirements hereof, the City's recovery of the airlines' share of MHJIT Project costs shall be calculated using the following methodology for allocating costs and in accordance with Exhibit U-1 in Attachment 3. The MHJIT will be treated as a single international cost/revenue center. All costs and revenues related to the use of MHJIT will remain within this international cost/revenue center. Inside Concession credits from Concourse F and the International Terminal Building and revenues received from Domestic Use Charges at MHJIT shall be credited against the rates and charges of all international activity at the MHJIT. The final MHJIT GARB funding will be allocated between the International Terminal Building, Concourse E and Concourse F pursuant to formulae outlined on Exhibit U-1 in Attachment 3. The Concourse E and Concourse F costs allocable to the airlines' rate base will then be equalized across all gates and passenger processing facilities for the purpose of establishing international use rates in the MHJIT.



Domestic use rates will be set equivalent to rates set for use of common use domestic gates pursuant to the Common Use Regulations with all revenue generated for the use of domestic operations in the MHJIT to be credited against international use rates and charges. Payment of rates and charges shall commence upon the date of beneficial occupancy of the International Terminal Building and Concourse F if the MHJIT Project is completed.

- (e) Upon completion of the MHJIT, Concourse E shall be accounted for together with the MHJIT and together with MHJIT will form a single international terminal cost/revenue, except that concession credits shall be limited to Inside Concessions, and that Concourse E concession credits will continue to accrue, and be shared with, the Contracting Airlines.
- (f) All of the provisions of this Paragraph (f) apply only to the MHJIT. All MHJIT check-in kiosks, outbound baggage, gate, Concourse E and Concourse F Federal Inspection Service Facilities (the "FIS"), inbound baggage, baggage claim, ramp tower and FIDS/BIDS will be operated on a common use basis in the same manner that Concourse E operated prior to this Agreement. The CUTE technology platform will support state-of-the-art airline system requirements as previously specified by the airlines. Additionally, CPTC Lease Contracting Airlines that qualify for Priority Scheduling for Aircraft Gates at the MHJIT under this Agreement may at their own expense have proprietary systems (including, without limitation, under-wing luggage tracking systems) of their choosing installed at any or all gates designated for use by the City at Concourses E and F and in other areas assigned by the City at the MHJIT; provided that such system(s) do not interfere with the City's CUTE system..
- (g) Gate assignment protocols will be on a common use basis consistent with those currently followed on Concourse E, but with the largest international carrier serving HJAIA (as defined by number of daily international seat departures) selecting (within sixty (60) days of the execution of this Agreement) and receiving Scheduling Priority over six (6) of the twelve (12) Concourse F gates. Such preference will be for wide-body flights that are in the top 15% of the airline's international flights ranked by O&D passengers. "Scheduling Priority" shall mean the right to schedule flights on the gates in advance of any other carrier for the duration of the Extended Period. In the event the Scheduling Priority airline has not scheduled in advance that priority gate for a Group V aircraft at a time another airline would like to schedule it for a Group V aircraft international operation, the Scheduling Priority airline shall permit such use and scheduling if another Concourse F Group V gate is not available at the time in question and provided another Concourse E or F gate is available for any displaced operation. Once such reassignment occurs, the Scheduling Priority Airline may not displace the other scheduled flight of

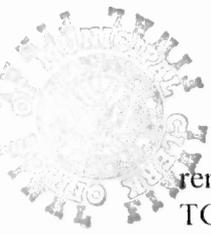


the airline, which flight would have precedence under the scheduling protocols for the MHJIT unless such airline ceases to schedule the priority gate for a Group V Aircraft.

- (h) Those CPTC Contracting Airlines that are relocating ticketing, outbound baggage and operations facilities to the MHJIT from the main terminals will be released from their future CPTC Lease obligations for vacated space when and as it is returned to the City. Similarly, airlines operating from Concourse F gates and electing to relocate club rooms and operations facilities from Concourse E will be released from their CPTC Lease obligations for such vacated space when and as returned to the City.
- (i) The City and airlines shall cooperate in good faith to identify and provide funding for MHJIT airline tenant improvements either through MHJIT project costs savings or the issuance of additional GARBS, if available. If such funding is available, the terms thereof shall be incorporated in a further amendment to the respective MHJIT airline's lease.
- (j) The parties agree that, unless the obstructions relating to Runway 27 are removed as described below in this section (k) that the Runway 27R extension is a requirement of the MHJIT Project and it will proceed immediately and be funded first with federal grants and second with PFCs. The goal is to ensure the extension is completed by the opening of MHJIT to facilitate long-range international flying. This Runway extension is also to be made part of the Use Agreement and all runways shall continue to be operated and maintained under the Use Agreement as modified hereby. If the relocation of any obstructions in the Runway 27, FAA Part 77, or ICAO departure and arrival flight planes would accomplish similar or better results, as determined based on a benefit cost analysis, including the understanding there would be no weight penalty to be taken for similar type aircraft, and conducted in accordance with FAA rules and procedures, and does not result in any weight penalty applied to a commercial aircraft that would not apply to such aircraft under the Runway 27R extension, then the Airport shall have the right to substitute such a project for the extension of Runway 27R provided that the such alternative project is completed on or before the DBO for MHJIT.
- (k) The City's obligations with respect to the MHJIT Project and MHJIT requirements provided for herein shall run concurrently with this Extension Agreement and apply until September 20, 2017.

(f) Replacement of Exhibit U. Exhibit U of the CPTC Lease shall be in effect until DBO of the MHJIT. Upon DBO of the MHJIT, Exhibit U is deleted in its entirety and replaced with Exhibit U-1 attached hereto as Attachment 3.

(g) Deletion of Section 4.06 of the CPTC Lease. This section is hereby deleted in its entirety.



(h) During the Extension Period, Airline will be invoiced for and pay a monthly TFES-C rental for the D-South Three Gate Addition Project (“TGAP”). Airline’s TFES-C rental for the TGAP will be based on the City’s unreimbursed cost of the project, an interest rate of 6.0% and an amortization period of 25 years. The City’s total cost of the TGAP is, subject to verification, \$ 20,586,488. The City agrees to request reimbursement for, subject to verification, \$17,727,370 of the TGAP cost. If such reimbursement is approved by City Council, Airline’s TFES-C rental for the TGAP will be based on a cost of \$2,859,118, which amount is subject to verification.

Section 2.2. Continuation of Rentals and Charges. Notwithstanding anything to the contrary in the CPTC Lease, all rates and charges under the CPTC Lease shall continue to be payable during the Extension Period to the City by Airline according to the CPTC Lease, the applicable rates and charges methodology, relevant MII approvals, relevant amortization periods and historical and current practices with respect to setting and adjusting rates and charges. Without limiting the generality of the foregoing, the following provision of Section 5.08(A) of the CPTC Lease shall have no effect and is hereby deemed deleted from the CPTC Leases: “Accordingly, it is agreed that Facilities Rental payments shall be payable only for a total period of thirty (30) years and such Facilities Rental payments, except for the land rental element provided for in Section 5.04(A)(2) of this Agreement, shall cease after thirty (30) years, notwithstanding the fact that the thirty (30) year lease term will continue for an additional period of time until expiration.”

ARTICLE III

AMENDMENT 9 TO USE AGREEMENT

Section 3.1. Amendment of Use Agreements. The Use Agreement is amended as follows: The term of the Use Agreement set forth in Article II of the Use Agreement is extended to September 20, 2017. The extension of Runway 27R as referenced in new 2.1 (e) (k) above is incorporated herein.

Section 3.2. Continuation of Rentals and Charges and Supplementary Payments.

Notwithstanding anything to the contrary in the Use Agreement prior to its amendment by this Amendment, all landing fees and other charges under the Use Agreement shall continue during the Extension Period according to the Use Agreement, the applicable rates and charges methodology, relevant MII approvals, relevant amortization periods and historical and current practices with respect to setting and adjusting rates and charges. The parties expressly acknowledge and agree that from and after September 20, 2010, the Supplemental Landing Fee provided for in Amendment 8 to the Use Agreement shall no longer apply. Without limiting the foregoing, the monthly payments under Article VIII of the Use Agreement shall continue to be in full force and effect through the applicable amortization period during the Extension Period.

ARTICLE IV



MISCELLANEOUS

Section 4.1. Governing Law. This Agreement has been made in and shall be construed in accordance with the laws of the State of Georgia.

Section 4.2. Conflicting Provisions; Effect of this Agreement. The parties intend the provisions of this Agreement to be interpreted as consistent with the CPTC Lease and Use Agreement to the extent possible; provided, however, that the provisions of this Agreement shall supersede and control over all conflicting or inconsistent provisions of the CPTC Lease and Use Agreement. Except as otherwise expressly provided in this Agreement, the provisions of the CPTC Lease and Use Agreement shall continue to be in full force and effect during the Extension Period.

Section 4.3. Complete Agreement; Amendments. This Agreement, together with the CPTC Lease and Use Agreement, as previously amended and supplemented, contains the entire and exclusive agreement of the parties with reference to the matters addressed. This Agreement supersedes all prior commitments, drafts, communications, discussions and understandings, oral or written, with respect hereto. This Agreement may not be modified, amended or otherwise altered except as agreed in writing by the parties.

Section 4.4. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement, or the validity or effectiveness of such provision in any other jurisdiction.

Section 4.5. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 4.6. Assignment or Transfer. Airline shall not sell, assign or transfer this Agreement, together with the CPTC Lease and Use Agreement, as previously amended and supplemented, without the prior written consent of City; provided, however, this Agreement, together with the CPTC Lease and Use Agreement, as previously amended and supplemented, may be assigned by Airline without such consent to any successors-in-interest of Airline, as the case may be, with or into which Airline, as the case may be, may merge or consolidate or which may succeed to the assets of Airline, as the case may be, or a major portion thereof related to its air transportation business.

Section 4.7. Waiver. No waiver by any party at any time of any of the terms, conditions, covenants or agreements of this Agreement, or noncompliance therewith, shall be deemed or



taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. No option, right, power, remedy or privilege of any party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Agreement are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein, and that the exercise of one right, power, option or remedy by any party shall not impair its right to any other right, power, option or remedy, except as specifically provided herein.

Section 4.8. Force Majeure. Neither City nor Airline shall be deemed to be in breach of this Agreement, by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to or results from any force majeure event including strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, 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 failure by Airline to pay the rentals and charges provided for herein except in those cases where provision is made elsewhere in this Agreement for the abatement of such rentals and charges under such circumstances; and this provision shall not prevent any party from exercising its rights of termination under the CPTC Lease or Use Agreement. Force majeure shall also apply to any failure to meet the Minimum Gate Utilization Standard in Attachment 2. Notwithstanding anything to the contrary herein, with respect to the Minimum Gate Utilization Standard in Attachment 2, force majeure with respect to strikes, boycotts and labor disputes related directly to Airline shall not exceed a period of forty-five (45) days following which Airline shall have forty-five (45) days to ramp back up operations for the purpose of Airline meeting the Minimum Gate Utilization Standard ("Ramp-up Period"). In determining Minimum Gate Utilization Standard compliance for any year during which force majeure is applicable under the sentence immediately above, the calculation shall exclude (i) the force majeure period and the Ramp-up Period; and (ii) the seats for those same days. A party claiming force majeure must provide written notice to the other parties of the alleged occurrence of force majeure within ten (10) days of the occurrence of the force majeure event setting forth the alleged date of the event.

Section 4.9. No Personal Liability. No elected official, director, officer or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

Section 4.10. Relationship Between Parties. City is neither a joint venturer with nor a partner or associate of Airline with respect to any matter provided for in this Agreement. Nothing herein contained shall be construed to create any such relationship between the parties or to subject City to any obligation of Airline whatsoever or to subject Airline to any obligation of City whatsoever except as set forth in this Agreement and the CPTC Lease and Use Agreement as amended.

Section 4.11. Time of Essence. Time is of the essence of this Agreement.



Section 4.12. Commence Negotiations. The parties agree to commence negotiations on another extension or successor agreement at least two years prior to the expiration of this Agreement.

Section 4.13. Headings. The headings contained herein are for convenience in reference and are not intended to define or limit the scope or any provisions of this Agreement.

Section 4.14. Notices. All notices, consents and approvals to be given hereunder shall be in writing and signed by a duly authorized representative of the party by or on whose behalf they are given and shall be deemed given when deposited in the United States mail by addressee, postage pre-paid, certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party).

A. City:
City of Atlanta
Department of Aviation
Hartsfield-Jackson Atlanta International Airport
P. O. Box 20509
Atlanta, Georgia 30320
Attention: Aviation General Manager

With a Copy to:

City of Atlanta
Department of Law
68 Mitchell Street
Suite 4100
Atlanta, Georgia 30303
Attention: City Attorney

B. Airline:
AirTran Airways, Inc
9955 AirTran Blvd.
Orlando, Florida 32837

Attention: Sr. VP and General Counsel

Section 4.15. Necessary Approvals; Effectiveness. This Agreement requires legislative approval by the City Council. It will not be effective or legally binding until such approvals are granted. Furthermore, this Agreement will not become binding on the City and the City will incur no liability or obligation under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to Airline (the



“Closing”); provided further that this Agreement will not become binding on Airline and Airline will not incur any liability or obligation under it until it has been executed by the Chief Executive Officers of each. Except for Sections 1.3, 1.4, 1.5, 1.6, 1.7, 2.1(c) and all Sections of Article IV which shall be effective upon Closing, all the provisions of this Agreement shall become effective upon September 20, 2010.

Section 4.16. Cross-references; Incorporation of Attachments. Cross-references in this Agreement are to Airline’s CPTC Lease and Use Agreement. All Attachments to this Agreement are hereby incorporated herein and made a part of this Agreement and the underlying CPTC Lease and Use Agreement as appropriate.

DRAFT



IN WITNESS WHEREOF, the parties, acting by and through their duly constituted officers, have caused this instrument to be executed this ___ day of _____, 2010.

ATTEST: **AIRTRAN AIRWAYS, INC. (Seal)**

Title: by _____
Title:

ATTEST: **CITY OF ATLANTA (Seal)**

Municipal Clerk by _____
Mayor

APPROVED AS TO INTENT: **APPROVED:**

Aviation General Manager Chief Procurement Officer

APPROVED AS TO FORM:

City Attorney



ATTACHMENT 1

**EXHIBITS B, C, D, E, F and Y
AIRTRAN CPTC LEASE SPACE DRAWING**

DRAFT



ATTACHMENT 2

Assignment and Reallocation of Preferential Use Aircraft Gates and Common Use Aircraft Gates with Priority Scheduling Assignment

1. Assignment. Effective on the commencement of the Extension Period, Airline is hereby assigned the CPTC Lease Preferential Use Aircraft Gates, Common Use Aircraft Gates with Priority Scheduling, related support space, ticketing and other Preferential Use Space as shown on Attachment 4 hereto. Such Gate or Gates are identified based on Gated Aircraft Parking Positions. As indicated on Attachment 4 the respective number of aircraft Gates assigned as the Preferential Use Aircraft Gates and Common Use Aircraft Gates with Priority Scheduling for Airline are as follows:

Location	Preferential Use Aircraft Gates Parking Positions	Common Use Aircraft Gates with Priority Scheduling Gated Aircraft Parking Positions
Concourse C South	22	0
Concourse D South	0	10
Total	22	10

- (a) The City has established as a measure of appropriate utilization of a Gate for assignment the operation of an average of 750 total aircraft seats on outbound domestic flights per Gate, per day, averaged over a one (1) year period from October 1, 2008, through September 30, 2009.
- (b) Notwithstanding the above metric and process, the Airline and the City have agreed on the assignment of the number of Preferential Use Aircraft Gates and Common Use Aircraft Gates with Priority Scheduling as set forth in the chart above in this Section 1 of Attachment 2.

2. Preferential Use Rights -- Generally.

- (a) It is expressly agreed and understood that the Preferential Use Aircraft Gates and Preferential Use Space confer a non-exclusive right of use as defined in this Attachment 2 and are not a real property right and shall not be assigned or otherwise alienated or hypothecated in any manner whatsoever by the Airline without the written consent of the Aviation General Manager, except that in the case of an assignment or transfer for which the City has no consent rights under the terms of Article 9.26 of the CPTC Lease, Airline's preferential use



and Airline's Common Use Aircraft Gates with Priority Scheduling shall be transferable to the successor airline; and provided further, that Airline shall have the right to enter into use agreements of such Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling (and in each case including the right to use Joint Lease Premises) with the Aviation General Manager's written consent which shall not be unreasonably withheld and Handling Agreements with other airlines at such premises or otherwise without the Aviation General Manager's or the City's consent (such use agreement and Handling Agreement airlines collectively the "Use Arrangement Airlines"). Such uses shall be subject to all rights and limitations held by the City. Airline shall promptly provide the City with notice and a copy of each Handling Agreement with respect to services being provided at its gates or space covered by Attachment 2, but in no event later than thirty (30) days after the Airlines enter into a Handling Agreement. Wherever in this Section "Preferential Use Aircraft Gates" is used, the same rights and obligations shall apply to "Common Use Aircraft Gates with Priority Scheduling." No common use protocols shall apply to Preferential Use Aircraft Gates or Common Use Aircraft Gates with Priority Scheduling.

- (b) Airline shall have the right to permit its affiliate or code share partners, commuter airlines and Use Arrangement Airlines (collectively "Airline Users") to have access to Airline's Preferential Use Aircraft Gates and Preferential Use Space.
- (c) Airline and Airline Users shall have priority at all times using Airline's Preferential Use Aircraft Gates and Preferential Use Space, with Airline determining the priority of use among Airline Users.
- (d) Such preferential use rights shall extend to the preferential right to use the aircraft parking positions adjacent to such Preferential Use Aircraft Gates, as shown on Attachment 4, for the parking of aircraft and support vehicles and the loading and unloading of passengers and cargo.

3. Adjustment, Reallocation and prior Flights by Other Carriers

- (a) Policy. The City is committed to maintain a policy of providing open access to the Airport and achieving a balanced utilization of Airport facilities. To achieve that goal, the City reserves the right (i) to reassign Preferential Use Aircraft Gates and Common Use Aircraft Gates with Priority Scheduling pursuant to Subsection 3(b) and (ii) to require shared use of Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling as described in Subsection 3.
- (b) Adjustments Necessary to Accommodate Other Carriers



- (1) Airline agrees to accommodate flights by other carriers operating on its domestic Common Use Aircraft Gates with Priority Scheduling that would have Historical Precedence according to the Common Use Protocols as of the first day of the execution of this Agreement (“Grandfathered Flights”) on Airline’s Common Use Aircraft Gates with Priority Scheduling Rights. The Airline and the City agree to list the Grandfather Gates in Attachment 10 no later ten (10) days after the beginning of the Extension Period. Airline agrees to charge such other carriers no more than the City charges for the use of the domestic common use gates. Any conflict between Airline and any such other carrier regarding charges, accommodation or any other issue associated with such other carrier’s accommodation on Airline’s Common Use Aircraft Gates with Priority Scheduling will be settled by the Aviation General Manager whose decision on the matter will be final. Within sixty (60) days of the commencement of the Extension Period, the City will distribute a list of the Grandfathered Flights to Airline, which list shall be added to this Agreement as Attachment 10.

- (2) Notwithstanding Airline’s satisfying the Minimum Gate Utilization Standard, if an airline, including any airline with fewer than ten (10) Preferential Use Aircraft Gates seeking to expand its service or an airline seeking entry into the Airport (in each case a “Requesting Airline”), is in need of space or facilities at the Airport, which need cannot be met by use of then Common Use Aircraft Gates or un-leased premises, if any, the City shall direct such Requesting Airline to request the use of leased space or facilities of all Signatory Airlines and other airlines leasing space on a voluntary basis. Airline, other Signatory Airlines and other airlines leasing space shall make reasonable efforts to accommodate such requests in a timely manner from any Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling assigned to them. Other airlines with ten (10) or more Preferential Use Aircraft Gates are prohibited from using Airline’s Preferential Use Aircraft Gates, Preferential use Space and Common Use Aircraft Gates with Priority Scheduling.

- (3) The process for such adjustment to accommodate another carrier shall be implemented as follows:
 - (i) the City receives a written request from a Requesting Airline requesting space or facilities of a type granted to Signatory Airlines or other airlines on a preferential use basis, together with evidence concerning the Requesting Airline’s efforts to communicate with all Signatory Airlines and other airlines to arrange for such space or facilities;

 - (ii) the City determines that the Requesting Airline has made commercially reasonable efforts to communicate with Signatory Airlines, which efforts may include communications by e-mail, and airlines but despite such



commercially reasonable efforts, has not been able to find reasonable accommodation for its proposed operations and the space or facilities it needs; and

(iii) the City determines that:

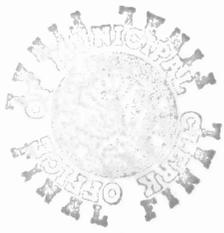
- (A) such Requesting Airline needs the requested space or facilities to accommodate passengers or aircraft; and
- (B) the City cannot provide such space or facilities to such airline on a timely basis; then

(iv) the City may grant such Requesting Airline the right of temporary or shared use of a designated portion of a Signatory Airline's or other airline's Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling Assignment, including, but not limited to, the use of passenger loading bridges and other appurtenant equipment which are reasonably necessary for the effective use of such space, whether owned by airline or the City, as well as the aircraft parking positions adjacent to such space, but excluding airline's member-only airline clubs within airline's Preferential Use Aircraft Gates and Preferential Use Space.

(4) In the event the City determines that a Requesting Airline's needs require granting such Requesting Airline the right to share or temporarily use Preferential Use Aircraft Gates, Preferential Use Space and/or Common Use Aircraft Gates with Priority Scheduling, the City shall serve written notice to all Signatory Airlines and other airline's assigned Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling of that determination and notice of the City's intention to make a further determination, in not less than 15 calendar days, as to how the Requesting Airline will be accommodated.

(5) In accordance with the rules and priorities set forth in Subsection 3(c)(7) below, the City may grant the Requesting Airline the right of shared or temporary use of a designated portion of Airline's Preferential Use Aircraft Gates, Preferential Use Space (excluding Airline's member-only airline clubs) and Common Use Aircraft Gates with Priority Scheduling, as well as rights of ingress and egress, the right to use the aircraft parking positions adjacent thereto and the right to use passenger loading bridges and other appurtenant equipment which are reasonably necessary for the effective use of such space, provided, that:

- (i) such Requesting Airline provides the Airline with indemnification and proof of insurance relating to claims arising due to Requesting Airline's use of Airline's assigned space satisfactory to Lessee;



provided, however, that Airline may not require any indemnification more favorable to it than that which Airline provides to the City hereunder;

(ii) such Requesting Airline agrees to pay the Airline the sum of the following:

(A) an amount equal to a pro rata share of the sum of the terminal rentals and any other applicable payments, fees or taxes payable by Airline hereunder with respect to such areas during such shared or temporary use period as calculated herein; and

(B) additional amounts sufficient to recover Airline's direct costs and operation and maintenance expenses, if any, of such shared or temporary use, including a reasonable allocation of any capital and equipment costs for property and equipment owned by Airline;

(iii) such Requesting Airline enters into a written agreement with Airline therefore, which agreement shall not be inconsistent with the terms and conditions stated herein and shall be submitted to the City for written approval prior to the effective date thereof.

(6) Airline agrees to make reasonable efforts to facilitate the temporary or shared accommodation of the Requesting Airline's scheduled operations, including the use of passenger loading bridges used or owned by Airline and other portions of Airline's Preferential Use Aircraft Gates, Preferential Use Space (excluding Airline's member-only airline clubs) and Common Use Aircraft Gates with Priority Scheduling as may be reasonably necessary to accommodate the Requesting Airline in the event the City requires such use. In the event that the Requesting Airline and Airline are not able to agree to a form of written agreement with thirty (30) days pursuant to Subsection 3(c)(5) above after reasonable efforts by both parties, the City shall have the right, at any time after consultation with both parties, to set the final terms of such written agreement, which shall provide no less protection of the Airline's interests than Airline provides for the City's interest hereunder, and be binding on both the Requesting Airline and Airline.

(7) In the event that, pursuant to Subsection 3(b)(2) above, the City determines that a Requesting Airline is in need of facilities to accommodate passengers or aircraft and such facilities should be made available from Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling of any Signatory Airline or other airline, the City will follow the following rules and priorities in designating the specific premises for temporary or shared use by the requesting airline:



- (a) Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling shall be designated for temporary or shared use in the reverse order of the magnitude of the then present utilization by Signatory Airlines and other airlines. Utilization by Airline shall be evaluated based on all operations at their Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling.
 - (b) In assessing the degree of such utilization by Signatory Airlines and other airlines, the City will use reasonable efforts to consider all the following factors:
 - (i) maintaining hub connection times and efficiency;
 - (ii) the average number of flight arrivals and departures per aircraft parking position per day;
 - (iii) flight scheduling considerations;
 - (iv) potential labor conflicts;
 - (v) the number, availability and type (e.g. wide-body or narrow-body) of aircraft parking position locations;
 - (vi) the preferences of the Signatory Airlines as to which of their specific premises are designated for temporary or shared use by the Requesting Airline; and
 - (vii) maintaining connecting service and other benefits of the hub.
 - (c) In the event City requires Airline to share Airline's Preferential Use Aircraft Gates, Preferential Use Space and Common Use Aircraft Gates with Priority Scheduling, Airline shall have priority in all aspects of usage of such shared premises over all other airlines (and other of the Airline Users shall have priority over any Requesting Airline); provided that Airline or any of such Airline Users shall not change its scheduling or ordinary course usage of such premises in a manner that would interfere with the usage of such premises by a Requesting Airline sharing such premises.
- (8) Once the City determines that a Requesting Airline must be permitted shared use of Preferential Use Aircraft Gates and Preferential Use Space, and the Requesting Airline begins using such space, the Airline shall not be allowed to displace such Requesting Airline from such sharing as long as the Requesting Airline continues to schedule in advance the use of the Gate or space at that time for its flight operations.



- (9) During the use of Airline's Preferential Use Aircraft Gates, Preferential Use Space, Common Use Aircraft Gates with Priority Scheduling or other related facilities by a Requesting Airline scheduled by the City pursuant to this Section, Airline shall not be held liable by the City with regard to any claim for damages or personal injury arising out of or in connection with such Requesting Airline's use of Airline's Preferential Use Aircraft Gates, Preferential Use Space, Common Use Aircraft Gates with Priority Scheduling or other related facilities, unless caused by the negligence of Airline, its employees or agents.
- (c) Substantial Reduction in Utilization. If the combined utilization of Airline and their Airline Users, Grandfathered Flights and any Requesting Airlines accommodated in Airline's Gates under this Attachment 2 of Preferential Use Aircraft Gates and Common Use Aircraft Gates with Priority Scheduling of Airline is less than the Minimum Gate Utilization Standard at the end of each one year period following September 20, 2010 (September 20, 2011; September 20, 2012; September 20, 2013; September 20, 2014; September 20, 2015; and September 20, 2016), the City shall have the right to recapture certain such Gates. Within ninety (90) days after each such one year period, the City shall determine whether Airline is in compliance with the Minimum Gate Utilization Standard. If the City determines that Airline has not been in compliance with the Minimum Gate Utilization Standard, the Aviation General Manager, upon sixty (60) days written notice to Airline, may reclassify Airline's Gates to Common Use Gates as necessary to bring Airline into compliance with the Minimum Gate Utilization Standard going in the following order: (i) Concourse D Common Use Aircraft Gates with Priority Scheduling; and (ii) Concourse C Preferential Use Gates (along with related Preferential Use Space).; If reclassification occurs, Airline shall have the right to designate from the Gates on any Concourse affected by reclassification which Gate(s) to reclassify, provided that such Gates on any concourse shall be adjacent to or in close proximity to one another if more than one Gate is reclassified.

It is understood and agreed that the City's rights to recapture and reclassify gates, is the only remedy of the City under this Agreement in the event of non-compliance with the Minimum Gate Utilization Standard.



ATTACHMENT 3

EXHIBIT U-1

THE OPERATION OF THE MAYNARD HOLBROOK JACKSON JR. INTERNATIONAL TERMINAL AND USER RATES AND CHARGES

I – Operation of the Maynard Holbrook Jackson Jr. International Terminal

The City may itself operate or contract with a third party for the operation of the MHJIT. In any event, the MHJIT will be a public, common use facility available for all international arrivals, international departures, as well as domestic arrivals and domestic departures, subject to the following provisions:

- (a) Airlines will be permitted to use the MHJIT in the following order of priority:
 1. International scheduled arrivals
 2. International scheduled departures
 3. International precleared arrivals
 4. Domestic scheduled departures that are continuations of international arrivals
 5. Domestic scheduled arrivals/departures

- (b) All using carriers, including Airline, shall have the option of providing their own ground handling services, including delivery of baggage to the Landside Terminal Buildings and other locations throughout the CPTC. However, fuel will be available only through the City's fuel storage and distribution system, or through an airline managed fuel consortium, although Airline may provide its own into-plane fueling or may contract with a third party of Airline's choice to provide into-plane fueling services. Airline may individually, or collectively with other airlines, operate and maintain its exclusive tenant finishes, equipment and systems in the MHJIT (Exclusive TFES—MHJIT).

- (c) Airline may not utilize its existing CPTC domestic gates for international departures unless there does not exist an available gate or one that could be made available by relocation of an inactive aircraft for such departure. Only MHJIT gates may be utilized for international arrivals. Check-in and baggage claim facilities for all International Passengers and Precleared Passengers shall be provided at MHJIT, except that Airline shall have the right to process international passengers who arrive at its preferential use facilities elsewhere in the west Landside Terminal Building provided that for purpose of rates and charges and related MHJIT payment obligations of the airlines, all international passenger calculations, including revenues, shall be allocated to MHJIT irrespective where the processing takes place.

- 
- (d) City and Airline agree to use reasonable efforts to direct to MHJIT all International Passengers on all websites, correspondence, flight information and flight status displays, signage, maps and all other relevant printed and electronic media.
 - (e) The City covenants and agrees that all Federal Inspection Services for passengers at the Airport shall be conducted at the MHJIT, and at no other facility on the Airport.

II - Allocation of MHJIT Project and M&O Costs to MHJIT FIS Facility; and MHJIT FIS Facility Users Rates and Charges

- A. It is the intent of the City, the Contracting Airlines and the MHJIT Lessee Airlines that the City shall bear all MHJIT CPTC Project Costs attributable to the MHJIT FIS Facility (MHJIT City Project Costs), excluding any airlines' Exclusive TFES-CE required to construct same, as if the City were a Contracting Airline which had leased the MHJIT FIS Facility as Preferential Use Space. To calculate debt service allocable over all space in the MHJIT, add to the debt service amortization amounts associated with the financing of Concourse E the debt service amortization amounts prescribed in Section 5.10 (a) for the bonds issued to finance the MHJIT Project. Each of the Concourse E debt service and the MHJIT debt service shall be allocated between the MHJIT building and the Aircraft Parking and Ramp Area on the basis of the construction costs. The sum of the above debt service allocated to the building is then allocated over all MHJIT Rentable Space (the total of which is currently estimated at 2,465,000 square feet, subject to verification sixty days prior to the date of beneficial occupancy) to arrive at an annual rentable per square foot debt service cost. The debt service allocated to the Aircraft Parking and Ramp Area shall be allocated directly to user charges on the basis of the square footage of space allocated to each area defined in Paragraph D below. For the avoidance of doubt, all MHJIT maintenance and operating costs related to AGTS shall be allocated to the current AGTS cost center.
- B. In addition, with respect to the MHJIT FIS Facility, the City (or its third-party operator) shall bear a prorated share of certain maintenance and operating costs ("M&O Costs") incurred by the Contracting Airlines under Title VI of the CPTC Lease. These costs shall be determined and allocated to the City (or its third-party operator) as set forth below:

(a) M&O Costs

- i. The City (or its third-party operator) shall be solely responsible for the costs of maintaining and operating the MHJIT FIS Facility.
- ii. The City's (or its third-party operator's) share of maintenance and operating costs under Section 6.01A shall be determined by the Contracting Airlines in accordance with the formulae referred to therein on the same basis as if the City (or its third-party operator) were a Contracting Airline which had leased the MHJIT FIS Facility as Preferential Use Space. Where any formula refers to the enplaned



passengers of a Contracting Airline, such reference shall mean, in the case of the City (or its third-party operator), the passengers deplaned at the MHJIT FIS Facility.

- iii. The City's pro rata share of maintenance and operating costs of the Aircraft Parking and Ramp Area for Concourse E and Concourse F.

(b) Annual Operating Charges

- i. The City (or its third-party operator) shall be responsible for the total actual cost of any police and fire services provided within the MHJIT FIS Facility and police, security and traffic management costs associated with the public curb space and roadways serving the MHJIT as shown in Attachment 7.
- ii. The City (or its third-party operator) shall be responsible for the total of any actual costs of any public liability, fire and extended insurance coverage provided for the MHJIT FIS Facility.

C. The cost of providing, maintaining and operating the MHJIT FIS Facility shall be recovered by the City from the MHJIT FIS Facility Users on the basis of a nondiscriminatory, reasonable and equitable schedule of use charges. Such schedule shall include an "international arrivals charge," an "international departures charge," a "domestic use charge," a "check-in use charge," and a "domestic baggage claim charge," including in each instance, a differential charge for "Plane-Mate" or bus use if applicable, all based on a reasonable and equitable proration of costs and expenses incurred for facilities and services in the MHJIT FIS Facility. Such charges shall be calculated based upon the share of the MHJIT Building Costs attributed to the MHJIT FIS Facility (including facilities used by the City's third-party operator and government agencies), and all other MHJIT FIS Project costs as described above and including, but not limited to, general tenant finishes, equipment and systems in the MHJIT FIS Facility, maintenance and operating costs, and any reasonable administration, overhead and management costs and expenses incurred by the City or its third-party operator. As with other areas of the CPTC, maintenance and operation expenses with respect to roadways, curb space and other exterior areas shall be solely the City's responsibility and shall not be included in the rates and charges of the airlines except with respect to reasonable police, security and traffic management costs associated with the public curb space and roadways serving the MHJIT as shown on Attachment 7 up to a \$1.0 million annual cap, as adjusted by the lesser of either a CPI factor or actual costs increases.

To the extent revenues in any applicable billing quarter, including revenues received from domestic operations, exceed the cost of providing, maintaining and operating the MHJIT FIS Facility in that quarter, in accordance with the terms of this Agreement, the excess will be deducted in the calculation of costs for the following quarter and an appropriate adjustment shall be made to the MHJIT FIS Facility User charges. To the extent revenues in any applicable billing quarter, including revenues received from



domestic operations, are less than the cost of providing, maintaining and operating the MHJIT FIS Facility in that quarter, in accordance with the terms of this Agreement, the shortfall will be added in the calculation of costs for the following quarter and an appropriate adjustment shall be made to the MHJIT FIS Facility User charges.

Concession credits with respect to the MHJIT shall be handled as provided in the CPTC Lease except as provided below. Specifically, revenues from Inside Concessions on Concourse E shall be allocated to all Contracting Airlines in accordance with Section 5.07 and Section 7.11 of the CPTC Lease. Revenues from Inside Concessions in the International Terminal Building and Concourse F shall be credited only to Contracting Airlines that pay fees and charges for international activity at the MHJIT. The allocation of these Inside Concession Credits shall be to the Contracting Airlines paying international charges at the MHJIT and shall be based on each such Contracting Airline's relative share of total payments for the International Arrivals Charges and International Departure Charges. In accordance with Section 7.11(B) the City shall not be considered a Contracting Airline for purposes of allocating Inside Concession Credits from the International Terminal Building and Concourse F.. A hypothetical example pro forma calculation of MHJIT costs and revenues allocations, charges and credits is attached as Exhibit MM-1 in Attachment 5. Such calculations are further described in the following Section D. It is understood and agreed that the amounts shown in Exhibit MM-1 are for purposes of illustration and will be replaced by actual amounts at and after DBO of MHJIT.

Notwithstanding the illustrative nature of the amounts shown, the formulas and calculation methodology shown in the Exhibit MM-1 shall apply, and in the case of any conflict between such calculation methodology and the text of the following Section D, that shown in the Exhibit MM-1 shall govern.

Airline shall provide the City (or its third-party operator) with projected flight schedules and passenger projections as needed to assist in the estimated billings. Should such requested information not be submitted timely or should such requested information not be reasonable in the City's (or third-party operator's) judgment, then the City (or third-party operator) shall use their best professional judgment in determining users flight and passenger information needed to prepare estimated billings.

D. Calculations of MHJIT FIS Facility User Charges

(a) "International Arrivals Charge"

The City's annual International Arrival Costs relating to the use of the MHJIT FIS Facility shall be calculated by multiplying the space allocated to the International Only Passenger Use Area (IOPUA) of the MHJIT FIS Facility by the per square foot debt service cost as calculated in Section II.A. above plus fifty percent (50%) of allocated Aircraft Parking and Ramp Area debt service. To this figure shall be added the share of current annual M&O costs, including third-party operation charges and fifty percent (50%) of Aircraft



Parking and Ramp Area maintenance and operating costs for Concourse E and Concourse F, when applicable, and City Operations charges allocable to the IOPUA and one third (1/3) of up to a \$1.0 million cap, as adjusted by the lesser of either a CPI factor or actual costs increases, of the maintenance and operating costs associated with respect to reasonable police, security and traffic management costs associated with the public curb space and roadways serving the MHJIT as shown on Attachment 7, less fifty percent (50%) of the projected Domestic Use Charges for the MHJIT, to determine the annual International Arrivals Costs for the MHJIT FIS Facility. The per passenger "International Arrivals Charge" shall then be determined by dividing one quarter (.25) the Annual International Arrivals costs for the MHJIT FIS Facility by the projected total deplanements for the MHJIT FIS for the following three-month period.

(b) "International Departures Charge"

The City's annual International Departures Costs relating to the use of the MHJIT FIS Facility shall be calculated by multiplying the space attributable to the International/Domestic Passenger Use Areas (IDPUA) of the MHJIT FIS Facility by the per square foot debt service cost as calculated in Section II.A. above, plus fifty percent (50%) of allocated Aircraft Parking and Ramp Area debt service. To this figure shall be added the share of current annual M&O costs, including third-party operation charges and fifty percent (50%) of Aircraft Parking and Ramp Area maintenance and operating costs for Concourse E and Concourse F, when applicable, and City Operations charges allocable to the IDPUA and one third (1/3) of up to a \$1.0 million cap, as adjusted by the lesser of either a CPI factor or actual costs increases, of the maintenance and operating costs associated with respect to reasonable police, security and traffic management costs associated with the public curb space and roadways serving the MHJIT as shown on Attachment 7, less fifty percent (50%) of the projected Domestic Use Charges for the MHJIT, to determine the annual International Departures Costs for the MHJIT FIS Facility. The per passenger "International Departures Charge" shall then be determined by dividing one quarter (.25) the Annual International Departures costs for the MHJIT FIS Facility by the sum of the projected total international enplanements (including those to airports with United States Customs and Border Protection preclearance facilities) and the projected total deplanements from airports with United States Customs and Border Protection preclearance facilities for the MHJIT FIS for the following three month period. The International Departures Charge shall be charged for all passengers enplaning to or deplaning from airports with United States Customs and Border Protection preclearance facilities.

(c) "Domestic Use Charge"



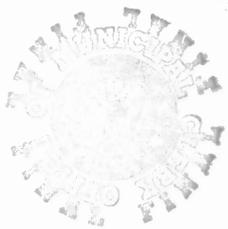
The per passenger “Domestic Use Charge” to be charged all domestic enplaning and deplaning passengers at the MHJIT shall be the same as the domestic use charge established for use of the Common Use Gates under the domestic Common Use Regulations.

(d) “Passenger Check-in Use Charge”

The City’s annual Passenger Check-in Costs relating to the use of the MHJIT FIS Facility shall be calculated by multiplying the space attributable to the International/Domestic Check-in Areas (IDCA) of the MHJIT FIS Facility by the per square foot debt service cost as calculated in Section II.A. above. To this figure shall be added the share of current M&O costs, including third party operation charges, when applicable, and City Operations charges allocable to the IDCA included in the above calculation and one third (1/3) of up to a \$1.0 million cap, as adjusted by the lesser of either a CPI factor or actual costs increases, of the maintenance and operating costs associated with respect to reasonable police, security and traffic management costs associated with the public curb space and roadways serving the MHJIT as shown on Attachment 7 to determine the annual Passenger Check-in Costs for the MHJIT FIS Facility. The per passenger “Passenger Check-in Use Charge” shall then be determined by dividing one quarter (.25) the Annual Passenger Check-in Costs for the MHJIT FIS Facility by the projected total international local Atlanta originating enplanements for the MHJIT FIS for the following three month period.

(e) “Precleared/Domestic Baggage Claim Use Charge”

The City’s annual Passenger Precleared/Domestic Baggage Claim costs relating to the use of the MHJIT FIS Facility shall be calculated by multiplying the space attributable to the Domestic Only Baggage Claim Areas (DOBCA) of the MHJIT FIS Facility by the per square foot debt service cost as calculated in Section II.A. above. To this figure shall be added the share of current M&O costs, including third-party operation charges, when applicable. The per passenger “Domestic Baggage Claim Use Charge” shall then be determined by dividing one quarter (.25) the Annual Passenger Precleared/Domestic Baggage Claim costs for the MHJIT FIS Facility by the projected total precleared deplanements for the MHJIT FIS for the following three-month period.



ATTACHMENT 4

EXHIBITS B, C, D, E, F and Y

AIRTRAN PREFERENTIAL CPTC LEASE SPACE DRAWING

DRAFT



ATTACHMENT 5
Exhibit MM-1

DRAFT



ATTACHMENT 6
Exhibit CC
ATRIUM AREA

DRAFT



ATTACHMENT 7

Exhibits YY and ZZ

Maynard Holbrook Jackson Jr. International Terminal

DRAFT



ATTACHMENT 8

GAP PROJECTS

<u>Project</u>	<u>WBS</u>	<u>Project Cost</u>	<u>Phase 1 (*)</u>
1 WIFI & MUFIDS Equipment Room Upgrade	H.03.90.009	\$976,200	\$976,200
2 Vertical Transportation Upgrade - Phase 2	H.03.90.201	\$57,500,000	\$57,500,000
3 Concourse A Electrical Equipment Renovations	H.03.91.005	\$8,604,000	\$8,604,000
4 APM Power Distribution System Equipment Upgrade	H.03.08.031	\$3,250,000	\$3,250,000
5 APM Tunnel Structural Repair	H.03.08.041	\$4,320,000	\$4,320,000
6 APM Rail, Grout Pads Repair	H.03.08.042	\$2,000,000	\$2,000,000
7 APM Running Surface Structural Repairs	H.03.08.043	\$2,000,000	\$2,000,000
8 APM Communications Systems Replacement	H.03.08.051	\$3,600,000	\$3,600,000
9 West Crossover Improvements Phases1-3	H.03.10.017	\$3,500,000	\$3,500,000
10 People Mover Mall Flight Paths Art Installation (Between Concourses A & B)	H.03.08.XXX	\$3,975,000	\$3,975,000
11 Terminal HVAC Upgrades (Design Only)	H.03.10.100	\$59,336,000	\$5,933,600
12 Concourse C Midpoint Expansion (Design Only)	H.03.50.050	\$45,771,000	\$4,577,100
Phase 1 - CPTC / Gap List Projects Sub-Total			\$100,235,900
			Phase 2 (*)
13 Concourse T & Terminal Electrical Equipment Renovations	H.03.91.001	\$15,635,000	\$15,635,000
14 Concourse D Electrical Equipment Renovations	H.03.91.006	\$3,714,000	\$3,714,000
15 APM Mezzanine Lighting & Finishes Replacement	H.03.08.XXX	\$854,000	\$854,000
16 CPTC Cosmetic Improvements	H.03.XX.XXX	\$3,300,000	\$3,300,000
17 CPTC Mechanical, Electrical & Plumbing Improvements	H.03.XX.XXX	\$3,300,000	\$3,300,000
18 Terminal HVAC Upgrades (Construction)	H.03.10.100	\$59,336,000	\$53,402,400
19 Concourse C Midpoint Expansion (Construction)	H.03.50.050	\$45,771,000	\$41,193,900
Phase 2 - CPTC / Gap List Projects Sub-Total			\$121,399,300
Phases 1 & 2 Total			\$221,635,200

(*) Excludes G&A and AMPT cost allocations at rates negotiated by Airlines and the City of Atlanta Department of Aviation.



EXHIBIT A

ELEMENT LEVEL INFORMATION PACKAGE

DRAFT



ATTACHMENT 10
GRANDFATHERED FLIGHTS

DRAFT



ATTACHMENT 11

MEGA MERGE PROJECT

[Note to City: Insert description]

DRAFT

RCS# 449
7/19/10
3:09 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

EXCEPT 10-O-1227

ADOPT

YEAS: 11
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 4

B Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	B Martin	Y Watson
Y Young	B Shook	B Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		07-19-10
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	
1. 10-O-0808	39. 10-R-1286	59. 10-R-1302
2. 10-O-1206	40. 10-R-1287	60. 10-R-1303
3. 10-O-1207	41. 10-R-1325	61. 10-R-1304
4. 10-O-1248	42. 10-R-1326	62. 10-R-1305
5. 10-O-1250	43. 10-R-1332	63. 10-R-1306
6. 10-O-1346	44. 10-R-1288	64. 10-R-1307
7. 10-O-0305	45. 10-R-1289	65. 10-R-1308
8. 10-O-1204	46. 10-R-1290	66. 10-R-1309
9. 10-O-1220	47. 10-R-1291	67. 10-R-1310
10. 10-O-1214	48. 10-R-1292	68. 10-R-1311
11. 10-O-1337	49. 10-R-1293	69. 10-R-1312
12. 10-O-1251	50. 10-R-1293	70. 10-R-1313
13. 10-R-1259	51. 10-R-1294	71. 10-R-1314
14. 10-R-1260	52. 10-R-1295	72. 10-R-1315
15. 10-R-1261	53. 10-R-1296	73. 10-R-1316
16. 10-R-1263	54. 10-R-1297	74. 10-R-1317
17. 10-R-1264	55. 10-R-1298	75. 10-R-1318
18. 10-R-1265	56. 10-R-1299	76. 10-R-1319
19. 10-R-1266	57. 10-R-1300	77. 10-R-1320
20. 10-R-1267	58. 10-R-1301	78. 10-R-1321
21. 10-R-1268		79. 10-R-1322
22. 10-R-1269		80. 10-R-1323
23. 10-R-1270		81. 10-R-1324
24. 10-R-1271		
25. 10-R-1280		
26. 10-R-1281		
27. 10-R-1282		
28. 10-R-1283		
29. 10-R-1331		
30. 10-R-1273		
31. 10-R-1344		
32. 10-R-1274		
33. 10-R-1275		
34. 10-R-1336		
35. 10-R-1277		
36. 10-R-1278		
37. 10-R-1284		
38. 10-R-1285		