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**LEASE AND OPERATING AGREEMENT**

**By and Between**

**MONROE COUNTY, NEW YORK**

**and**

**MONROE COUNTY AIRPORT AUTHORITY**

**Relating to**

**the**

**GREATER ROCHESTER INTERNATIONAL AIRPORT**

**Dated as of September 15, 1989**

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THIS LEASE AND OPERATING AGREEMENT dated as of September 15, 1989 between MONROE COUNTY, NEW YORK (the "County"), a municipal corporation and a political subdivision of the State of New York, and the MONROE COUNTY AIRPORT AUTHORITY (the "Authority"), a body corporate and politic constituting a public benefit corporation, duly organized and validly existing under the laws of the State of New York.

W I T N E S S E T H:

WHEREAS, the Authority was created by the Monroe County Airport Authority Act, Chapter 663 of the Laws of 1989 of the State of New York (the "Act") and is vested with the powers and duties described in the Act, including the power to borrow money, issue debt and enter into agreements with the County for the financing by the Authority of a "Project", as such term is defined in the Act; and

WHEREAS, pursuant to the Act the Authority is authorized thereby, among other things, to establish and collect fees, rates, rents and other service charges for the use of "Aviation Facilities", as such term is defined in the Act, or for related services furnished, rendered or made available by the Authority, so as to receive Revenues which, together with Other Available Funds of the Authority, will be sufficient to place such facilities on a self-sustaining basis; and

WHEREAS, pursuant to the provisions of the Act, the Authority and the County are authorized to enter into an agreement for the transfer from the County to the Authority, for use in the exercise of its corporate powers and purposes, of any property or facility including, without limitation, Aviation Facilities; and

WHEREAS, the County has heretofore owned and operated a certain airport together with related facilities commonly known and referred to as the "Greater Rochester International Airport"; and

WHEREAS, the County has heretofore undertaken a certain project or projects at such airport relative to the construction, renovation and expansion of the terminal thereon and certain related projects; and

WHEREAS, in order to effectuate the commencement and execution of said projects and the financing therefor, the County wishes to lease to the Authority the premises herein described, provided, however, that during the term of such lease the County and the Authority wish to contract to provide for the operation, management and administration of such premises by the County; and

WHEREAS, the County by its Resolution No. 437 of 1989 of the County Legislature of the County has duly authorized the execution of this Agreement by the County Executive of the County (the "County Executive") on its behalf; and

WHEREAS, the Authority by its Resolution No. 12 of 1989 has duly authorized the execution of this Agreement by the Chairperson of the Authority (the "Chairperson") on its behalf.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is agreed as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1. *Definitions.* The terms set forth in this Section shall have the meanings ascribed to them for all purposes of this Agreement unless the context clearly requires otherwise. Capitalized terms used herein and not otherwise defined shall have the respective meanings accorded such terms in the Act. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

"Act" shall mean the Monroe County Airport Authority Act, enacted as Chapter 663 of the Laws of 1989 of the State of New York and constituting Title 31 of Article 8 of the Public Authorities Law of the State of New York, as from time to time amended.

"Agreement" shall mean this Lease and Operating Agreement, dated as of September 15, 1989, by and between the County and the Authority as from time to time amended or supplemented.

"Authority" shall mean the Monroe County Airport Authority, a body corporate and politic constituting a public benefit corporation created and existing under and by virtue of the Act.

"Authorized Representative" shall mean, in the case of the Authority, its Chairperson or Vice Chairperson, or such other person or persons so designated by resolution of the Authority, and in the case of the County, the County Executive, unless a different County official is designated herein to perform the act or sign the document in question.

"Bond" or "Bonds" shall mean any bonds, notes or other obligations authorized by and at any time outstanding pursuant to the Indenture.

"*Bondholder*" or "*Holder*" shall mean the registered owner of any Bond or Bonds.

"*Business Day*" shall mean a day of the year which is not a Saturday, Sunday or legal holiday in Rochester, New York and not a day on which banking institutions in Rochester, New York are authorized or obligated to close.

"*Charter*" shall mean, collectively, the Monroe County Charter and the Monroe County Administrative Code, as from time to time amended.

"*Construction*" shall have the meaning accorded such term in Section 2752(6) of the Act.

"*County*" shall mean Monroe County, New York.

"*Effective Date*" shall mean 12:01 a.m. on October 5, 1989.

"*Fiscal Year*" shall mean the twelve-month period commencing on January 1 of each year; provided, however, that the Authority and the County may, from time to time, agree on a different twelve-month period as the Fiscal Year.

"*Grant Aid*" shall mean any grants in aid made for the Leased Property by the federal government (now called "AIP") or by the State.

"*Indenture*" shall mean the Trust Indenture dated as of September 15, 1989 between the Authority and Chase Lincoln First Bank, N.A. as Trustee, as amended and supplemented from time to time.

"*Leased Property*" shall mean the real and personal property and other rights leased by the County to the Authority pursuant to Article II hereof.

"*Lease Term*" shall mean the term of this Agreement determined pursuant to Section 2.1(a) and 12.3 hereof.

"*Mineral Activities*" has the meaning set forth in Section 2.1(b)(6) hereof.

"*Other Available Funds*" shall have the meaning set forth in Section 1.01 of the Indenture.

"*Permitted Encumbrances*", when used with reference to the Leased Property, shall mean (i) any and all liens, encumbrances, security interests, leases, subleases or other defects in or clouds on title which may exist on the Effective Date, (ii) this Agreement, (iii) utility, access and other easements, rights of way and exceptions which do



not materially impair the operation or maintenance of the Leased Property or the Revenues therefrom, (iv) mechanics', materialmen's, warehousemen's, carriers' and other similar liens, to the extent permitted by law and liens for taxes at the time not delinquent or being contested and (v) agreements for the sale and leaseback of elements of the Leased Property.

"Person" shall mean an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

"Revenues" shall mean all revenues, fees, income, rents and receipts, accrued by the Authority in accordance with generally accepted accounting practices from or attributable to the Leased Property or any lease or other contractual arrangement with respect to the use of the Leased Property, including without limitation any use agreements or lease agreements, or from the sale or condemnation of any property of the Leased Property permitted under the Indenture, including the proceeds of any insurance covering business or rental interruption loss. Revenues also include all interest, profits or other income derived from the investment of any moneys held pursuant to the Indenture and required to be paid into the "Revenue Fund" (established pursuant to and defined in the Indenture) and the proceeds of any interest subsidy with respect to the Bonds paid for or for the account of the Authority by any governmental body or agency. Revenues shall not include: (a) Grant Aid; (b) proceeds received on insurance resulting from casualty damage to assets of the Leased Property to the extent that such proceeds are used to reconstruct or replace damaged assets; (c) rentals or other charges (other than ground rental) derived by the Authority under and pursuant to a lease or leases relating to "Special Purpose Facilities" (as such term is defined in the Indenture); (d) the proceeds of sale of Bonds or other obligations issued for Leased Property purposes; or (e) the proceeds of any passenger facility charge or similar tax.

"State" shall mean the State of New York.

"Surplus Fund" shall mean the fund by that name established pursuant to Section 5.02 of the Indenture.

"Use and Lease Agreements" shall mean the Airline-Airport Use and Lease Agreements for Greater Rochester International Airport which have been or may be entered into by and between the Authority and certain air carriers servicing the Greater Rochester International Airport.

## ARTICLE II

### LEASE

SECTION 2.1 *Term of Lease; Demise of Leased Property.* (a) The term of the leasehold estate created in favor of the Authority pursuant to this Agreement shall commence on the Effective Date and shall continue until the thirtieth (30th) day following the date on which all Bonds are paid in full or provision therefor shall have been made in accordance with the Indenture.

(b) The County hereby leases the Leased Property to the Authority, and the Authority hereby hires, takes and leases the Leased Property from the County, to be used for its corporate purposes and solely upon the terms and conditions hereinafter expressed, for the Lease Term. The Leased Property shall include (whether now in use or hereafter acquired) all of the County's right, title and interest in any properties specified in clauses 1, 2, 3 and 4 below, and shall not include any of the County's right, title or interest in any properties described in clauses 5 or 6 below, all as more fully set forth below:

There shall be included in the Leased Property:

1. all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Rochester, and the Towns of Gates and Chili, Monroe County, New York commonly known and described as the "Greater Rochester International Airport" as more fully shown or set forth in Exhibit A attached hereto and hereby made a part hereof (the "Premises"), together with any and all appurtenances, rights, privileges, easements, licenses, rights of way and rights of entry benefiting, belonging or pertaining thereto, and any right, title and interest of the County in and to any land lying in the bed of any street, road or highway (open or proposed), in front of or adjoining the Premises and in and to any land situate northerly of that certain road commonly known as Brooks Avenue lying in the bed of any street, road or highway (open or proposed) providing ingress and/or egress to and/or from the Premises, and together with any strips or gores relating to the Premises;

2. all plants, buildings, structures, improvements, fixtures and items of machinery, equipment and other real and tangible personal property acquired, rehabilitated, constructed and installed (including all work in progress as soon as commenced) and used or to be used for, among other things, (i) the air transportation of passengers, freight, baggage and cargo to, from, in, on or about the Premises, (ii) the accommodation and servicing thereon of aircraft of

all types, and (iii) the maintenance, development or improvement of the Premises including, without limitation, runways, aprons, hangars, control towers, ramps, taxiways, navigation aids, warehouses, office and service buildings, structures, parking facilities, concession facilities, maintenance facilities, fuel facilities, facilities for the overnight accommodation of passengers and carrier employees, facilities for the loading, unloading, holding, interchange or transfer of such passengers, freight, baggage or cargo, and property necessary to remove, mitigate, prevent or limit airport hazards;

3. all repairs, replacements, improvements, substitutions, extensions or renewals thereof or additions thereto, and all parts, additions and accessories incorporated therein or affixed thereto; and

4. any other materials, supplies, plans and property contained in the above-mentioned plants, buildings and structures incidental to, or necessary or useful and convenient for, the operation, use or maintenance of such facilities described in subparagraphs 1, 2 or 3 hereof;

reserving and excepting unto the County, however:

5. any property or rights of the County the conveyance of which pursuant to this Agreement would cause a reversion to or in favor of, or permit a reentry by or in favor of, any third party; and

6. all mines and minerals whatsoever (but not including surface or sub-surface waters) already or hereafter found and discovered, on or under the lands to be conveyed pursuant to this Agreement; with power and authority for the County to perform the following acts (the "Mineral Activities"): to enter upon and leave such lands at all times to work, mine, get, prepare, process and take away any and all of said minerals below or on the surface of such lands and to sink, drive, make and use shafts, pits, air and water courses and other approaches, entrances and exits in connection therewith; provided, however, that the County shall not undertake any Mineral Activities which shall interfere with the operation and maintenance of the Leased Property or adversely affect Revenues.

**SECTION 2.2. *Right of County to Enter Leased Property.*** The County shall retain the right to enter upon any portion of the Leased Property to use any property which is located in, across or upon the Leased Property for any purpose; provided, however, that such entry or use shall not adversely affect Revenues.

SECTION 2.3. *Payments by Authority.* The Authority shall pay to the County rental and other payments enumerated in Article VIII hereof at the times and in the amounts therein set forth.

SECTION 2.4. *Grant of Revenues, Grant Aid and Insurance Proceeds to the Authority.* Subject to Section 9.1 of this Agreement, the County hereby gives, grants, conveys and transfers to the Authority all of its right, title and interest in the Revenues, Grant Aid and proceeds received from insurance resulting from casualty damage to the Leased Property, including, without limiting the generality of the foregoing, all of its rights to collect and receive the same, subject only to the provisions of this Agreement and the Indenture permitting the application thereof for or to the purposes and on the terms and conditions herein and therein respectively set forth.

All Revenues, Grant Aid and proceeds received from insurance resulting from casualty damage to the Leased Property received or receivable by the Authority shall belong to the Authority, and shall be applied as provided in the Indenture.

SECTION 2.5. *Transfer of Applications, Proceedings, Approvals and Permits.* As provided in Section 2773 of the Act, where necessary or desirable and to the extent not prohibited by any State or Federal law, the County hereby assigns and transfers to the Authority any and all licenses, approvals, permits, determinations, findings, awards or decisions heretofore or hereafter issued or granted pursuant to or as a result of any application, review or process in relation to or in furtherance of the purposes of or contemplated by the Act heretofore filed or undertaken, or any proceeding heretofore commenced by the County with the United States Environmental Protection Agency, the Federal Aviation Administration, the State Department of Environmental Conservation, the State Department of Transportation, any other Federal or State agency or instrumentality or other Public Corporation. The County and the Authority shall enter into one or more agreements as may be necessary to effect such assignments and transfers, which agreements may provide that any such application, review, process or proceeding shall inure to and be for the benefit of the Authority and shall be binding upon the Authority to the same extent and in the same manner as if the Authority had been a party to such application, review, process or proceeding from its inception, and that the Authority shall be deemed a party thereto. Such agreements may provide that, to the extent permitted by the approving or licensing party, all licenses, approvals, permits, determinations, findings, awards or decisions, heretofore or hereafter issued or granted pursuant to or as a result of any such application, review, process or proceeding shall inure to the benefit of and be binding upon the Authority, and that such agreements may be assigned and transferred by the County to the Authority to the extent such

assignment and transfer is not prohibited by State or Federal law.

SECTION 2.6. *Condition of Leased Property.* The Authority accepts the Leased Property in its condition as of the Effective Date, subject to Permitted Encumbrances, without warranty or representation by the County, express or implied, as to the condition, design, operation, merchantability or fitness of the Leased Property or as to its suitability for the Authority's purposes or needs.

SECTION 2.7. *Recordation and Filing of Agreement.* Upon the issuance of Bonds by the Authority, and only upon the request of the County, the Authority shall record, or cause to have recorded, at its sole cost and expense, this Agreement or a memorandum hereof in the appropriate office of the County Clerk of Monroe County, New York and, if required by applicable law, filed in the appropriate offices of the State Department of Transportation, Federal Aviation Administration, any other State or Federal agency or instrumentality, or other Public Corporation.

### ARTICLE III

#### INDEMNIFICATION

SECTION 3.1. *Indemnification.* (a) To the extent permitted by law and subject to Section 3.2 hereof, the County hereby releases the Authority and its members, officers and employees (collectively, the "Indemnified Parties") from, agrees that the Indemnified Parties shall not be liable for and agrees to defend, indemnify and hold harmless the Indemnified Parties from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Leased Property or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Leased Property, or (ii) liability arising from the Authority's leasing of the Leased Property and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing; provided that any such losses, damages, liabilities or expenses of any of the Indemnified Parties are not incurred by reason of or do not result from the gross negligence or willful misconduct of such Indemnified Party. Except as provided above, the foregoing indemnities shall apply notwithstanding the fault or negligence on the part of any of the Indemnified Parties and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The willful misconduct or gross negligence of any party indemnified hereunder will not affect the indemnity of any other party so indemnified.

Nothing herein contained shall be construed to affect, impair or limit in any manner whatsoever the Authority's obligations under Section 8.1(a) of this Agreement to pay to the County the amount of any judgment or settlement paid by the County arising out of a tort claim as specified therein.

(b) Notwithstanding any other provisions of this Agreement, the obligations of the County pursuant to subparagraph (a) hereof shall remain in full force and effect after the expiration or earlier termination of this Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by any of the Indemnified Parties relating to the enforcement of the provisions herein specified.

SECTION 3.2. *Conditions.* The right to indemnification of each Indemnified Party by the County pursuant to Section 3.1 hereof is expressly subject to satisfaction of the following conditions:

(a) Each Indemnified Party shall promptly forward to the County all summonses or notices pertaining to claims received or served upon such Indemnified Party, together with a written request for indemnification pursuant to this Article;

(b) Each Indemnified Party shall cooperate in aiding the County to investigate, adjust, settle or defend each claim, action or proceeding; and

(c) The defense of all claims, actions and proceedings shall be conducted by, or under the supervision of, the County. The County Attorney of the County shall be the attorney of record on behalf of each Indemnified Party in all actions and proceedings for which indemnification is requested by such Indemnified Party.

SECTION 3.3. *Conflict of Interest.* In the event that the County Attorney determines at any time that, with respect to any matter, a conflict of interest exists as between the County and an Indemnified Party, the County Attorney shall give written notice of the existence of such conflict and the general nature thereof to the Authority and, in the event the Indemnified Party is other than the Authority, to such Indemnified Party. The Authority, upon receipt of such notice, shall retain at its sole cost and expense outside legal counsel for such Indemnified Party with respect to such matter.

## ARTICLE IV

### OPERATION AND MAINTENANCE OF THE LEASED PROPERTY

SECTION 4.1. *County to Operate and Maintain.* The County shall continue to administer and operate the Leased Property, maintain the Leased Property in good and safe order and condition and make all repairs therein. As used in this section, "maintain" and "repair" shall include all necessary repairs, replacements, renewals, alterations and additions, whether structural, non-structural, ordinary or extraordinary and "administer" shall include, without limitation, the enforcement of regulations of the County relating to the use of the Leased Property, or any portion thereof. The Authority hereby agrees to pay the County for such services the amounts specified in Section 8.1(a) of this Agreement. Except as specifically provided in or pursuant to this Agreement, nothing contained in this Section 4.1 shall be construed to impose any obligation or liability upon the County for the administration, operation, maintenance and repair of the Leased Property not heretofore imposed upon it in connection with such Leased Property.

SECTION 4.2. *Agreement as to Leased Property.* Neither the County nor the Authority shall commit or suffer, and each shall use all reasonable care to prevent waste, damage or injury to the Leased Property.

SECTION 4.3. *Compliance with Regulations.* The Leased Property shall be used, operated and maintained in accordance with all applicable law, including the applicable rules and regulations of the County. The Director of Public Works of the County shall continue to exercise his powers pursuant to the laws of the United States, the State of New York, the Charter, and local law to administer, operate, maintain and regulate the use of the Leased Property; provided, however, that nothing herein contained shall diminish the power of the Authority pursuant to the Act to promulgate such rules and regulations as it deems necessary or appropriate from time to time.

## ARTICLE V

### CONSTRUCTION OF PROJECTS

SECTION 5.1. *County to Construct.* (a) The Authority hereby appoints the County its true and lawful agent, and the County hereby accepts such agency, to (i) perform, or cause to have performed, the Construction of any Project undertaken by the Authority pursuant to the Act, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts and writings and instructions with any Persons, and in general to do all things

which may be requisite or proper, all for the Construction of any such Project with the same powers and with the same validity as the Authority could do if acting on its own behalf, (iii) to pay all Costs of Construction incurred in connection with any such Project from funds made available by the Authority therefor in accordance with Article VIII of this Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Authority under the terms of any contract, order, receipt or writing in connection with the Construction and completion of any such Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

(b) The Authority shall enter into, and accept the assignment of, such contracts as the County may request in order to effectuate the purposes of this Section 5.1.

SECTION 5.2. *Title to Vest in Authority.* Title to all materials, machinery, Equipment and Facilities intended to be incorporated or installed in any Project shall vest in the Authority immediately upon deposit on the Leased Property or incorporation or installation in the Project, whichever shall first occur. The County shall execute and deliver and, at the sole cost and expense of the Authority, record or file all instruments necessary or appropriate to so vest title to the Authority.

SECTION 5.3. *Property Acquisition.* Nothing contained in this Agreement shall limit the County's right and power to eminent domain and condemnation, and the County may acquire all real and personal property or any interest therein necessary or useful for the Construction or effectuation of a Project. If the County effects such acquisition by eminent domain or condemnation, it shall take the property or interest therein, as the case may be, in its own name.

## ARTICLE VI

### COUNTY PROVISION OF SERVICES

SECTION 6.1. *Authority Retention of County.* The Authority hereby hires, retains and employs the County and the County hereby agrees to render for and on behalf of and, when appropriate or necessary, in the name of and as agent for the Authority, any and all services necessary or desirable to Construct any Project, maintain, repair, operate and administer the Leased Property, and, to the extent permitted by law, carry out all the public and corporate purposes and powers of the Authority pursuant to and by virtue of the Act including, without



limitation, those services hereinafter enumerated in this Article VI. The Authority hereby agrees to pay the County for such services the amounts specified in Section 8.1(a) of this Agreement.

SECTION 6.2. *Operation and Engineering Services.* The County's Departments of Public Works and Engineering shall, as the case may be, plan and supervise the planning for, construct, maintain, repair, operate and administer the Leased Property.

SECTION 6.3. *Budgeting Services.* The County's Office of Management and Budget shall, together with the County's Department of Public Works, supervise the preparation and administration of the annual capital and operating budgets for the Leased Property.

SECTION 6.4. *Fiscal Services.* The County's Department of Finance shall supervise, audit and control the financial affairs of the Authority and the Leased Property, including, without limitation, the collection of all Revenues, the making of all expenditures, and the purchase and sale of all supplies, materials, equipment and services. The Authority hereby appoints the County's Director of Finance or, in the event the County Executive shall also serve as the Director of Finance pursuant to the Charter, the First Deputy Director of Finance as its treasurer.

SECTION 6.5. *Legal Services.* Subject to the provisions of Section 3.3 of this Agreement, the County's Law Department, by the County Attorney, shall serve as the legal advisor of the Authority and, on its behalf in Authority matters, of its officers and employees. The County Attorney shall prosecute and defend all actions or proceedings of a civil nature brought by or against the Authority and shall prepare resolutions to be presented for action by the Authority, together with notices and other items in connection therewith. The Authority hereby appoints the County Attorney as its secretary.

SECTION 6.6. *Police, Fire and Health Protection Services.* Pursuant to Section 2757(5) of the Act, the County shall provide to the Leased Property police, fire and health protection services.

SECTION 6.7. *Insurance.* The County agrees to procure and maintain such policies of insurance so as to satisfy the Authority's obligations under Section 6.10 of the Indenture. In lieu of such policies of insurance the County may, at its option and in compliance with Section 6.10 of the Indenture, agree to indemnify the Authority for all or any portion of the Authority's obligations under such Section 6.10 which may be so indemnified pursuant to the County's self-insurance program. In such event, the Authority shall pay to the County pursuant to Article VIII of

this Agreement a charge in-lieu of insurance premium to be fixed and established by the County. In fixing and establishing such charge, the County shall consider to the extent practicable premiums for insurance policies providing coverage of a comparable kind and amount.

SECTION 6.8. *Tax Covenants.* (a) The County covenants that it shall take no action, nor shall it approve the taking of any action or making of any investment or use of the proceeds of any Bonds (the interest on which is intended to be excluded from gross income for federal income tax purposes), which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and any proposed or final regulations thereunder as are applicable to such Bonds at the time of such action, investment or use.

(b) The County shall at all times do and perform all acts and things necessary or desirable and within its power in order to assure that interest paid on any Bonds (the interest on which is intended to be excluded from gross income for federal income tax purposes) shall be excluded from gross income for federal income tax purposes.

## ARTICLE VII

### COUNTY CONTRIBUTION

SECTION 7.1. *County to Provide Initial Contribution to Authority.* The County hereby agrees to contribute to the Authority from its airport enterprise fund the sum of Two Million Eight Hundred Thousand and No/100 Dollars (\$2,800,000) of which the sum of \$1,000,000 is to be applied by the Authority toward "Cost of Construction" as defined in the Indenture and the balance thereof to be used by the Authority for its corporate purposes.

## ARTICLE VIII

### PAYMENTS BY AUTHORITY

SECTION 8.1. *Payments by Authority for Operation, Maintenance and Reimbursement of County Expenses.* Subject to Sections 8.3 and 8.4 of this Agreement and to the provisions of the Indenture, the Authority shall make the following payments to the County:

(a) An amount sufficient to pay (i) the cost of administration, maintenance, repair and operation of the Leased Property, including, without limitation, salaries and wages of any full or part-time County employees providing

services on, at or with respect to the Leased Property or to or on behalf of the Authority, employees' health, hospitalization, pension and retirement expenses and other fringe benefits, insurance premiums, taxes, payments in-lieu-of taxes, water, pure waters and other governmental charges, utility and telephone charges, fuel costs, overhead costs incurred by the County attributable to the Leased Property or the Authority (but net of the amount of any governmental operating aid received or receivable within the current Fiscal Year with respect to the Leased Property), (ii) the cost of materials and supplies, and (iii) the amount of any judgment or settlement paid by the County (and not otherwise reimbursed from the proceeds of any policies of insurance or otherwise) arising out of a tort claim against the County or, pursuant to Article III of this Agreement, the Authority, but only to the extent that the County's liability therefor is related to Construction of a Project, the administration, operation, maintenance or repair of the Leased Property or the provision of services to the Authority and further limited to the extent of any monies in the Surplus Fund of the Authority established pursuant to the Indenture;

(b) An amount sufficient to reimburse the County for Costs of Construction (as defined in the Indenture) incurred by the County for the Construction of Projects which are not paid or reimbursed from any other source, including, without limiting the generality of the foregoing, the payment of any judgment or settlement arising out of a contract claim with respect to the Construction of any Project;

(c) An amount sufficient to pay the cost of services provided by the County pursuant to Article VI hereof;

(d) An amount sufficient to reimburse the County for the compensation, or the costs of the services, of any County officers and employees provided on a full-time or part-time basis to the Authority pursuant to Article X hereof.

**SECTION 8.2. Base Rental Payments.** (a) In addition to the payments described in Section 8.1, the Authority shall pay to the County, as a rental payment for the Leased Property:

(i) the amount of \$300,000 in each of 1992, 1993, 1994, 1995, 1996 and 1997 and;

(ii) an amount equal to the principal and interest payable on general obligation notes and bonds heretofore issued by the County, or which are hereafter issued by the County in accordance with the provisions of the Use and Lease Agreements, for Projects or with respect to the Leased

Property, and certified by the County to be paid within such Fiscal Year.

(b) The amounts due and payable by the Authority pursuant to paragraph (a)(i) of this Section shall be paid only from the Surplus Fund of the Authority and shall be deposited by the County into its airport enterprise fund. In the event the monies on deposit in the Surplus Fund are insufficient to pay in full the amounts due and payable pursuant to paragraph (a)(i) hereof, the unpaid portion thereof shall accrue to and be payable in the next succeeding Fiscal Year and shall remain a rental payment obligation of the Authority until paid in full.

SECTION 8.3. *Method of Payment.* (a) Subject to the provisions of the Indenture, amounts payable pursuant to Section 8.1(a)-(e) and Section 8.2 shall be paid as follows:

(i) No later than five (5) Business Days after final adoption of the County's Annual Budget for the ensuing Fiscal Year pursuant to the Charter, the County, acting by its Director of Management and Budget or such other person as the County shall designate, shall certify the following amounts to the Authority with regard to such Fiscal Year: (A) the amount which the County reasonably anticipates it will have expended in connection with each of the costs described in paragraphs (a) through (e) of Section 8.1 hereof; and (B) the payments, if any, payable pursuant to Section 8.2 hereof and, with respect to any County general obligation notes or bonds, the respective due dates for payment of principal and/or interest thereon.

(ii) The Authority covenants and agrees to pay to the County for the Leased Property without offset or deduction, and without previous demand therefor, rental in an annual amount equal to the amounts certified by the County pursuant to paragraph (a)(i) of this Section 8.3. Except as hereinafter provided, such rental shall be payable in advance, in equal monthly installments commencing on the first day of the first calendar month for the then current Fiscal Year and on the first day of each calendar month thereafter for the remainder of such Fiscal Year. With respect to those rental payments constituting principal and interest on the County's general obligation bonds pursuant to Section 8.2 of this Agreement, the Authority covenants and agrees to pay to the County the same without offset or deduction, and without previous demand therefor, at least five (5) Business Days prior to the date on which payment by the County to its bondholder is due. If the Effective Date is other than the first day of a calendar month or the expiration date of this Agreement is other than the last day of a calendar month, rental for any such fractional month shall be pro-rated on a per-diem basis.

(iii) Within one hundred twenty (120) days following the close of each Fiscal Year, or as soon as audited financial data for such Fiscal Year is available, the County shall recalculate the amounts due and payable from the Authority pursuant to this Agreement for the preceding Fiscal Year using audited financial data. Upon the determination of any difference(s) between the actual amounts paid by the Authority during the preceding Fiscal Year and the amounts that would have been paid using such recalculated amounts, the County shall, in the event of overpayment, credit to the Authority the amount of such overpayment, and in the event of underpayment invoice the Authority for the amount of such underpayment. Such invoiced amount shall be due and payable within twenty (20) days after the mailing date of such invoice.

(b) It is the intention of the parties to this Agreement that the amounts and rental payable hereunder by the Authority shall be net to the County and that all costs, expenses and obligations of every kind and nature whatsoever relating to any Project, the Leased Property or any services provided by the County hereunder, except as may otherwise be expressly provided to the contrary in this Agreement, be paid by the Authority.

SECTION 8.4. *Rate Covenants.* The Authority has covenanted in Section 6.12 of the Indenture to establish, fix and revise its rates and charges in the manner therein set forth, and the covenants and agreements contained in such Section 6.12 are hereby expressly incorporated by reference herein as if fully set forth herein. The Authority's rates, charges and fees shall be subject to the approval of the County; provided, however, that the County's approval shall not be required in those instances when the rates, charges or fees are established, fixed or revised by the Authority for the purposes of complying with the provisions of Section 6.12 of the Indenture.

## ARTICLE IX

### PROCEDURES FOR FISCAL YEAR 1989

SECTION 9.1. *Procedures for Determining Rental and Other Payments for Fiscal Year 1989.* (a) For Fiscal Year 1989, the actions to be taken pursuant to Article VIII hereof shall be taken as follows:

(i) The certification pursuant to Section 8.3(a)(i) shall be made not later than the Effective Date;

(ii) The County shall retain all Revenues received on or after the Effective Date which accrued prior to said date. In all other respects, the County hereby assigns all

Revenues received or receivable in respect of such rates and charges for Fiscal Year 1989 from and after the Effective Date to the Authority as of the Effective Date, and the Authority shall be responsible for adjustments, revisions, rebates, or increases, if any, with respect thereto.

(b) When an action required to be taken under this Agreement cannot be timely performed during Fiscal Year 1989 because the specified time for such action is (i) prior to the Effective Date or (ii) so soon after the Effective Date that the action could be timely taken only with extreme hardship to the County or the Authority, then such action shall be deemed timely taken for purposes of this Agreement if taken as soon as practicable.

(c) Within thirty (30) days after providing the certification required pursuant to this Section, the County's Director of Management and Budget shall file a copy thereof with the Clerk of the County Legislature.

#### ARTICLE X

##### USE OF COUNTY OFFICERS AND EMPLOYEES BY AUTHORITY

SECTION 10.1. *County Officers and Employees.* Subject to the approval of the County Executive, the County and the Authority may enter into agreements whereby the County will provide to the Authority the services of officers and employees of the County to carry out the public purposes of the Authority.

#### ARTICLE XI

##### PARTICULAR COVENANTS

SECTION 11.1. *Disposition of Property.* (a) The Authority agrees that it will not sell, lease, sublease, pledge, assign, transfer, mortgage, hypothecate, encumber or otherwise dispose of all or any part of the Leased Property, or any other real property or personal property which may be acquired by the Authority, or any interest (legal or equitable) therein, or its interest in this Agreement, except (i) in compliance with the terms and conditions of Section 6.04 of the Indenture, and (ii) with the prior approval of the County.

(b)(i) The County will not sell, transfer, or otherwise dispose of real property included in the Leased Property without the Authority's written consent. The Authority shall give such consent upon compliance with the terms and conditions of Section 6.04(a) of the Indenture. If the Authority consents, it shall release its leasehold interest in the property being disposed of.

(ii) Notwithstanding the foregoing, the County, with the prior written consent of the Authority, may grant interests in the Leased Property which, in the reasonable judgment of the Authority, do not interfere with the operation and maintenance of the Leased Property and do not adversely affect Revenues.

SECTION 11.2. *Contracts.* The Authority covenants that it will not, without the consent of the County, enter into any contracts requiring the payment of funds or the performance of work or the delivery of goods that extend beyond the end of the Lease Term or any renewal thereof.

SECTION 11.3. *Encumbrances.* The Authority may not authorize any use of, or grant any lien, encumbrance, security interest, license, easement or right-of-way in connection with, the Leased Property without the prior written approval of the County. The County may grant temporary licenses to use the Leased Property which do not interfere with the operation and maintenance of the Leased Property and do not adversely affect Revenues.

## ARTICLE XII

### MISCELLANEOUS

SECTION 12.1. *Disposition of Improvements.* Upon the expiration or earlier termination of the Lease Term, the County shall become the owner of any Projects, Equipment, Facilities, materials, machinery and other items of real and tangible personal property on the Leased Property.

SECTION 12.2. *Further Assurances.* The County and the Authority hereby covenant, from time to time, to do all acts and to make or enter into and deliver any contracts, agreements, leases, conveyances, certificates, statements, affidavits, or other instruments or documents as may be necessary or appropriate to effectuate this Agreement or to better assure, lease, transfer and confirm to the Authority the interest granted hereby.

SECTION 12.3. *Termination.* Notwithstanding the provisions of Section 2.1 hereof, the County may terminate this Agreement at any time upon thirty (30) days written notice to the Authority; *provided, however,* no such termination shall take effect until (a) the date on which all Bonds are paid in full or provision therefor shall have been made in accordance with the Indenture and (b) the County shall have paid or assumed all other liabilities and obligations of the Authority.

SECTION 12.4. *No Personal Liability.* Nothing contained in this Agreement and no act of the Authority, any member or group of members thereof, or of the County or any official, officer or

employee of the County performed or omitted in pursuance, effectuation or implementation thereof shall be construed to give rise to or create any personal liability whatsoever on the part of any present or future individual member or group of individual members of the Authority or any official, officer or employee of the County.

SECTION 12.5. *Waivers and Amendments.* No failure to exercise, and no delay in exercising on the part of the County or the Authority, as the case may be, any right, power or privilege hereunder, shall operate as the waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. This Agreement may not be amended or modified unless such amendment or modification is in writing, duly authorized by the County, and by the Authority; provided, however, that no amendment or modification of Section 2.1 and 12.3 of this Agreement may be made which may be to the detriment of any Bondholders.

SECTION 12.6. *Notices.* All notices, requests and other communications under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by certified mail (a) to the County at the office of the County Law Department, Monroe County Office Building, 39 West Main Street, Rochester, New York 14614, attention: County Executive, with a copy thereof to the President of the County Legislature; and (b) to the Authority at the Office of the County Executive, Monroe County Office Building, 39 West Main Street, Rochester, New York 14614, attention: Chairperson, or such other address as the County or the Authority, as the case may be, shall hereafter designate by notice in writing pursuant to this Section 12.6. Such notices, requests and communications shall be deemed given and effective upon receipt.

SECTION 12.7. *Severability.* In the event that any one or more of the provisions contained in this Agreement is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Agreement shall be in no way affected, prejudiced or disturbed thereby.

SECTION 12.8. *Headings.* The descriptive headings of the several Articles and Sections of this Agreement are inserted in this Agreement for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

SECTION 12.9. *Authorized Representatives.* The Authority may appoint one or more members, officers or employees as its



authorized representatives for the purpose of taking any action to be taken by the Authority hereunder. The Authority shall notify the County in writing of its authorized representatives and may change the same by notice in writing.

SECTION 12.10. *Agreement of County with Bondholders.* In accordance with the provisions of Section 2765 of the Act, the County does hereby pledge to and agree with the Holders of the Bonds that the County will not alter, limit or impair the rights and powers vested by the Act in the Authority to fulfill the terms of any contract made with Bondholders, or in any way impair the rights and remedies of such Holders, until the Bonds, together with the interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such Holders, are fully met and discharged.

SECTION 12.11. *County Execution of Tax Regulatory Agreement.* The County hereby authorizes its Director of Finance, or his designee, to execute and deliver a tax regulatory agreement with the Authority regarding the use of proceeds of Bonds, the investments of such proceeds, the use of all or any portion of the Leased Property and other tax matters.

SECTION 12.12. *No County Indebtedness Created.* Nothing contained in this Agreement shall be deemed to create an indebtedness on the part of the County nor obligate the County to issue its general obligation notes or bonds for the purposes of carrying out its duties and obligations hereunder; provided, however, that the County may, in its discretion, issue such notes or bonds for such purposes. Nothing contained in this Agreement shall be deemed to create any liability on the part of the County on or with respect to the Bonds.

SECTION 12.13. *Indenture to be Controlling.* In the event of any conflict between the terms of the Indenture and this Agreement, the terms of the Indenture shall be controlling.

SECTION 12.14. *Approval or Consent by County.* Except as may otherwise be expressly provided to the contrary in this Agreement, whenever the approval, authorization or consent of the County is required pursuant to this Agreement, such approval, authorization or consent shall be given in accordance with the provisions of the Charter.

SECTION 12.15. *Federal Aviation Administration Grant Agreements.* The Authority hereby acknowledges that the County has heretofore executed and delivered certain grant agreements by and between the County and the United States Department of Transportation, Federal Aviation Administration. The Authority, by executing and delivering this Agreement, agrees to be and remains bound by all of the terms, conditions, and assurances

contained in existing and future grant agreements, jointly and severally liable with the County during the period of time this Agreement is in effect.

SECTION 12.16. *Effectiveness of this Agreement.* This Agreement shall become effective, as of the Effective Date, upon the first issuance by the Authority of Bonds, irrespective of the date of its execution and delivery by the parties hereto.

IN WITNESS WHEREOF, this Lease and Operating Agreement has been duly executed by the parties hereto as of the date first above written.

MONROE COUNTY, NEW YORK

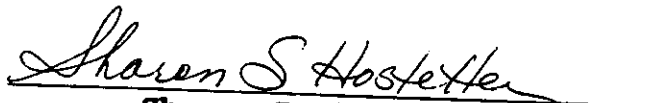
By:



Thomas R. Frey  
County Executive  
Monroe County, New York

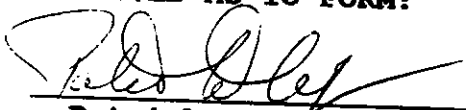
MONROE COUNTY AIRPORT AUTHORITY

By:



Sharon S. Hostetter  
Chairperson of the  
Monroe County Airport Authority

APPROVED AS TO FORM:



Patrick M. Maglieri  
County Attorney of  
Monroe County, New York

EXHIBIT A

