

AMENDMENT NO. 3

To The

AIRPORT OPERATION AND USE AGREEMENT

Between

CITY OF COLUMBUS

And

COLUMBUS MUNICIPAL AIRPORT AUTHORITY

Dated as of June 30, 2005

This **Amendment No. 3** to the Operation and Use Agreement (“Amendment”) is made and entered into as of June 30, 2005, between the City of Columbus, Ohio (the “City”), a political subdivision organized and existing under the laws of the State of Ohio and the City’s Charter, and the Columbus Municipal Airport Authority (the “Authority”), a port authority and political subdivision organized and existing pursuant to Chapter 4582 of the Ohio Revised Code and ordinances passed by the Council of the City.

WHEREAS, the City and the Authority entered into and executed an Airport Operation and Use Agreement filed with the Recorder of Franklin County on May 1, 1992 as Instrument No. 066286, at Volume 19318 Page A01 (the "Original Use Agreement"), the First Supplemental entered into July 31, 1995 (now re-designated as Amendment No. 1), the Second Supplemental entered into October 29, 1999 (now re-designated as Amendment No. 2), all of which, together with this Amendment, comprise the "Agreement";

WHEREAS, the Original Use Agreement provides terms of the lease, and future purchase, of Bolton Field and Port Columbus (collectively, the “Airports”) by the Authority from the City; and

WHEREAS, the City and the Authority have determined to revise the Original Use Agreement to improve the operation of the Airports and to settle and modify certain provisions of the Original Use Agreement.

### **AGREEMENT**

In consideration of the foregoing recitals and of their mutual promises in this Agreement, and intending to be legally bound by this Agreement, the City and the Authority agree as follows:

Section 1. The Authority shall pay the City \$2,853,886.00 which payment reflects the net difference between the Authority's obligation to repay the City the amount set forth in Section 7.03 of the Original Use Agreement, together with moneys due to the City from its purchase from the City of the remaining acreage of the Airport Golf Course (as described in Exhibit A hereto) not included as a Transferred City Asset in the original Use Agreement, and \$9,179,461.00, the amount due to the Authority by the City for past and future rents for the golf courses through 2038. The assumptions and calculations of the foregoing sums are set forth in Exhibit B attached hereto. As indicated in Exhibit B, the purchase by the Authority of the property described in Exhibit A reflects an exchange of property which includes a transfer of certain Bolton Field property to the City.

Section 2. The real property described in Exhibit A, which is part of the Columbus Airport Golf Course, shall be purchased by the Authority from the City as set forth in Exhibit B and shall be considered as part of the "Transferred City Assets" as defined in, and for all purposes of, the Agreement.

Section 3. The Authority will lease the Columbus Airport Golf Course and the Mentel Memorial Bolton Field Golf Course (collectively, the "Golf Courses"), as described in Exhibit C, to the City for the term extending until 2038, the future rent having been prepaid as set forth in Exhibit B. The lease shall provide that the City is responsible for the operation, maintenance and improvements to the Golf Courses; that the Authority is not liable for any injury or accident at the Golf Courses; and that the lease is subject to termination at any time at the option of the Authority for use as, or protection for, aeronautical operations.

Section 4. That the actions prescribed in Sections 1, 2, and 3 satisfy and discharge the terms and obligations of the City and the Authority pursuant to paragraph 7.03 of the Original Use Agreement.

Section 5. The real properties described in Exhibit D, which are located in the “Wonderland” development (approximately 10.4 acres), shall be considered as part of “Transferred City Assets” as defined in, and for all purposes of, the Agreement.

Section 6. Article III of the Original Use Agreement is hereby amended to read in its entirety:

**ARTICLE III**

**POWERS OF THE AUTHORITY**

As of the effective date of Amendment No. 3, and continuously thereafter, the Authority shall possess all of the powers and authority provided or available to a port authority under the provisions of Chapter 4582 of the Ohio Revised Code, as the same may be amended from time to time.

Section 7. Paragraph 7.01 of the Original Use Agreement is hereby amended to read in its entirety:

7.01. City Debt Currently Outstanding. There was outstanding as of December 31, 2001, the following general obligation bonds of the City which were issued by it for the use and benefit of the Airports (“the City Debt”):

<b><u>Bond Issue #</u></b>	<b><u>Description</u></b>	<b><u>Principal Amount Outstanding as of December 31, 2004</u></b>
80-13	Municipal Airport #22	\$940,000.00
82-12	Municipal Airport #26	\$50,000.00
85-20	Municipal Airport #27	\$180,000.00

99-08	Municipal Airport (P.A.) Refunding	\$3,955,000.00
01-07	Municipal Airport #34 Refunding	\$2,190,000.00
01-08	Municipal Airport (P.A.) #35 Refunding	<u>\$1,305,000.00</u>
	TOTAL:	<u>\$8,620,000.00</u>

The City will continue to be responsible to make all payments to the holders of such bonds of principal and interest from time to time coming due under the City Debt.

To the extent that any cash or funds included in the Transferred City Assets on the Effective Date are the proceeds of bond or note sales, the Authority agrees to be bound to use those funds in accordance with the purposes set forth in the ordinance that authorized such bond or note issuance from which the funds are derived, and further, the Authority agrees that such funds shall be used only in compliance with, and for such restricted uses or purposes contained in the bond proceedings connected with the source of those funds. Finally, the Authority covenants and agrees that it will perform and fulfill all obligations and covenants of the City necessary to maintain the tax exempt status of the City and the tax exempt status of any bonds issued on Airport projects.

Section 8. Paragraph 4.02 of the Original Use Agreement is hereby amended to read in its entirety:

4.02 Possible Prepayment of City Debt. The possibility exists that the Authority may desire to prepay, refund or defease some portion of the City Debt or Additional City Debt. Any such prepayment, refunding or defeasance shall require the City's prior approval (which, if granted, shall be conditioned upon the Authority's payment of any costs, premiums or fees incurred by the City), and should this occur, the subsequent Scheduled Payments shall be reduced by the amounts which, but for such repayment, refunding or defeasance, the City would have been obligated to pay with respect to the amount of City Debt and Additional City Debt

which is or has been prepaid, refunded or defeased by application of funds available to the Authority. Any prepayment of all outstanding City Debt and Additional Debt by the Authority shall be a purchase of the Airport Assets pursuant to Article XXI.

Section 9. Article XXI of the Original Use Agreement is amended to read in its entirety:

**ARTICLE XXI**

**AUTHORITY'S RIGHT TO PURCHASE AIRPORTS;  
TERMINATION OF AGREEMENT**

Upon receipt of (1) the entire remaining balance of the City Debt and Additional City Debt and all interest accrued and to be accrued thereon; and (2) the entire remaining balance of any further loans extended by the City to the Authority under Article VIII of this Agreement, including interest accrued and to accrue thereon, upon the terms of those loans, the City shall immediately quit claim to the Authority the City's retained interest in the Airport Assets, and the City shall convey to the Authority by quit claim deed all of the property then comprising the Airports, subject only to:

- (a) the existing title exceptions noted on Exhibits A-1 and A-2 of the Original Use Agreement;
- (b) any exceptions to title resulting from actions of the Authority subsequent to the Effective Date; and
- (c) deed restrictions acceptable to counsel for the Authority and the City which would limit the Authority's use of the Airports for public airport purposes in perpetuity.
- (d) reservation of easements for Utilities, road right-of-ways agreed to remain public as set forth as Exhibit E.
- (e) the Georgesville Transfer station as described in Exhibit F.

(f) the city fire station at Bolton Field as described in Exhibit G.

The right of purchase conferred upon the Authority under this Article XXI shall be non-assignable by the Authority. The City and Authority agree to split the costs of any surveys necessary to prepare and record the quit claim deed.

Upon the Authority's acceptance and recordation of the quit claim deed above described, this Agreement shall be terminated automatically and be of no further force or effect.

At any time following the Effective Date, provided the Authority is not in default hereunder (without regard to any grace period or cure provision), the Authority may purchase all of the property then comprising the Airport Assets by paying to the City the payments described above.

Section 10. Article II, Paragraph 2.06 entitled "Acceptance of Responsibility by Authority" of the Original Use Agreement is hereby amended as follows:

The following sentence shall be deleted: "No property comprising the Airport Assets will be utilized for purposes which are not primarily related to aviation, unless such alternate use shall be preceded by and based upon a specific written determination made by the Authority, and approved by the FAA and by ordinance of the City, that such property or asset is not amenable to or needed for aeronautical uses."

The following sentence shall be added as the last sentence in this Paragraph 2.06: "Nothing contained herein shall be construed to prevent a lawful sale or transfer of real or personal property by the Authority as it discharges its duties and responsibilities consistent with this section."

Section 11. Article II, add to Paragraph 2.07 The Authority shall identify by description and location for the benefit of the City all sewer and waterlines (hereinafter Utility

Facilities), and associated improvements which have been constructed, including any relocation of existing Utility Facilities or structures, on property which is owned or leased by the City or the Authority and which is under the operation, management, and control of the Authority pursuant to this Agreement. Easements for such Utility Facilities shall be reserved to the City in the deed to the Authority pursuant to Article XXI (d). The Authority shall not cause nor allow to be constructed any such further improvements without submitting or causing to be submitted, the plans, drawings and specifications therefore to the City's Department of Public Utilities, or its successor, for prior review and approval, and without first obtaining from the City all permits and paying all tap, capacity, user and other fees and charges applicable thereto pursuant to the Columbus City Codes, as amended.

Section 12. Article X, Paragraph 10.03, entitled "City to Retain Responsibility for Part 150 Compliance" of the Original Use Agreement is hereby repealed.

Section 13. Upon termination of the Agreement, in the event not reserved by the City in the quit claim deed set forth in Article XXI, the Authority shall provide easements to the City necessary for operation and maintenance of the City owned Utility Facilities on and through the Airports.

Section 14. This Amendment is subject to review by the Federal Aviation Administration (FAA) and this Amendment will become effective when this Agreement is approved by the FAA and upon the execution of this Amendment by the City and the Authority.

Section 15. This Amendment is made and entered into under, and shall be construed in accordance with, the laws of the State of Ohio.



Section16. If any provisions of this Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section17. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the City and the Authority have caused this Amendment to be executed by their respective duly authorized representatives.

CITY OF COLUMBUS, OHIO

\_\_\_\_\_  
Witness #1  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Michael B. Coleman, Mayor

\_\_\_\_\_  
Witness #2  
Print Name: \_\_\_\_\_

COLUMBUS MUNICIPAL  
AIRPORT AUTHORITY

\_\_\_\_\_  
Witness #1  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Witness #2  
Print Name: \_\_\_\_\_

