



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
little@cityofmorgantown.com

AGENDA
MORGANTOWN CITY COUNCIL
SPECIAL MEETING
City Hall - Council Chambers
July 31, 2012
6:45 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PUBLIC HEARING:**
 - A. **PUBLIC HEARING of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT AS "LESSOR" TO ENTER INTO AN AIRLINE LEASE AGREEMENT WITH SILVER AIRWAYS, CORP., AS "LESSEE", AS THE SAME APPLIES TO SILVER AIRWAYS, CORP.'S OPERATION AT THE MORGANTOWN MUNICIPAL AIRPORT.**
4. **UNFINISHED BUSINESS:**
 - A. **Consideration of APPROVAL of SECOND READING of ADOPTION of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT AS "LESSOR" TO ENTER INTO AN AIRLINE LEASE AGREEMENT WITH SILVER AIRWAYS, CORP., AS "LESSEE", AS THE SAME APPLIES TO SILVER AIRWAYS, CORP.'S OPERATION AT THE MORGANTOWN MUNICIPAL AIRPORT. (First Reading: July 3, 2012).**
5. **ADJOURNMENT**

If you need an accommodation contact us at 284-7439

**AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT AS
“LESSOR” TO ENTER INTO AN AIRLINE LEASE AGREEMENT WITH SILVER
AIRWAYS, CORP., AS “LESSEE”, AS THE SAME APPLIES TO SILVER AIRWAYS,
CORP.’S OPERATION AT THE MORGANTOWN MUNICIPAL AIRPORT.**

The City of Morgantown hereby ordains that its City Manager is authorized to execute the attached lease agreement by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AIRLINE LEASE AGREEMENT

THIS INDENTURE OF LEASE, by and between the **CITY OF MORGANTOWN, WEST VIRGINIA** (hereinafter referred to as **"LESSOR"**) and **SILVER AIRWAYS, CORP.**, a corporation organized and existing under and by virtue of the laws of the State of Delaware, (hereinafter referred to as **"LESSEE"**).

WITNESSETH

WHEREAS, "LESSOR" is now operating on certain real property located in the County of Monongalia, State of West Virginia, known as Morgantown Municipal Airport (hereinafter sometimes referred to as the **"AIRPORT"**); and

WHEREAS, "LESSEE" is engaged in the business of transporting persons, property, and mail by air and **"LESSOR"** desires to lease and grant, and **"LESSEE"** desires to hire and obtain certain premises and facilities on said **"AIRPORT,"** together within certain rights, licenses and privileges thereon.

ARTICLE I - PREMISES

"LESSOR" does hereby demise and let unto **"LESSEE"** and **"LESSEE"** does hereby hire and take from **"LESSOR"** the following premises and facilities, rights, licenses and privileges on and in connection with property and improvements of **"LESSOR"** specified as said **"AIRPORT"** as more particularly hereinafter set fourth;

(A) **USE OF AIRPORT.** The use, in common with others authorized so to do, of said **"AIRPORT"** and appurtenances, together with all facilities, improvements, equipment and services which have been or may hereafter be provided at or in connection with said

“AIRPORT” from time to time including, without limiting the generality hereof, the landing field, runways, aprons, taxiways, sewerage and water facilities, flood lights, landing lights, control tower, signals, radio aids and all other conveniences for flying landings, and takeoffs of aircraft of **“LESSEE,”** which use, without limiting the generality hereof, shall include;

(1) The operation of the transportation system by aircraft for the carriage of persons, property and mail (hereinafter referred to as **“AIR TRANSPORTATION”**);

(2) The use of subcontractors or agents, hereinafter referred to as **“AGENTS”**, in the support of the operation of **“AIR TRANSPORTATION.”**

(3) The repairing, maintaining, conditioning, servicing, parking or storage of aircraft or other equipment of **“LESSEE”** or of any other scheduled air transport operation;

(4) The training at the **“AIRPORT”** of personnel in the employ of or to be employed by **“LESSEE”** or its **“AGENTS”** and the testing of aircraft and other equipment; it being understood that such training and testing shall be incident to the operations by **“LESSEE”** or its **“AGENTS”** of its air transportation system, and provided that in the event **“LESSEE”** institutes an active training program or establishes a training base at or on the **“AIRPORT,”** fees for such use shall be established by mutual agreement;

(5) The sale, disposal or exchange of **“LESSEES”** aircraft, engines, accessories, gasoline, oil, greases, lubricants and other equipment or other fuel or supplies; provided, that such right shall not be construed as authorizing the conduct of a separate business by **“LESSEE,”** but to permit **“LESSEE”** to perform such functions as are incident to its operation of an air transportation system, and specifically, but without limitation, to permit the use by the **“LESSEE”** in connection with its operation of an air transportation system; and provided the

“LESSEE” may not sell gasoline, fuel, greases, and other lubricants except to any subsidiary or affiliated company or except when the same are a particular grade desired by others and not otherwise available (except from other air transportation operations) at said **“AIRPORT,”** and any such sale of any subsidiary or affiliated company shall be subject to the Airport Director's approval;

(6) The landing, taking off, parking, loading and unloading of **“LESSEE’S”** aircraft or other equipment, and the right, subject to availability of space, to store aircraft in any hangar owned or operated by **“LESSOR”** at the same rates as are charged by **“LESSOR”** to other scheduled air carriers or others storing similar aircraft;

(7) The loading or unloading of persons, property or mail at said **“AIRPORT”** by such motor vehicles or other means of conveyance as may be necessary. In the event a motor vehicle carrier holds a certificate of convenience and necessity and its service is found to be unsatisfactory, **“LESSEE”** shall have the right to file a complaint with the **“LESSOR”** and the **“LESSEE”** shall, if investigation verifies the complaint, notify the Public Service Commission, for suitable action;

(8) The right to install and operate advertising signs on the leased airport premises, the location, type and design of such signs to be subject to the approval of the **“LESSOR”**;

(9) The right to install, maintain and operate such radio communication, meteorological and aerial navigation equipment and facilities in, on and about the premises therein leased at said **“AIRPORT”** as may be necessary or convenient in the opinion of the **“LESSEE”** for its operations, the general location of such facilities to be subject to the approval of the **“LESSOR”**;

(10) The conduct of any other business or operations reasonably necessary to the proper conduct and operation by “LESSEE” of any air transportation system for the carriage of persons, property and mail by aircraft in the domestic or foreign commerce, subject to the approval of the “LESSOR”;

(B) **EXCLUSIVE USE SPACE IN THE TERMINAL BUILDING:** The exclusive use of Areas 104 and 113 (see attachment 1 hereto), consisting of approximately 295 square feet of space, in the area designated as the North Terminal, for such uses as “LESSEE” may desire to make thereof in connection with or incidental to its operation of an air transportation system, such uses to include, without limiting the generality hereof, the sale of tickets, manifesting of passengers and cargo and the operation of a general traffic, operations, security, administrative, and communications office.

(C) **JOINT USE SPACE IN THE TERMINAL BUILDING:** The joint use, with others authorized to do so, of Areas 105 and 106 (see attachment 1 hereto) consisting of approximately 570 square feet of space, in the area designated as the North Terminal, for the “LESSEE’S” use in handling, storing and processing as required, mail, cargo, and passenger baggage.

(D) **PUBLIC SPACE IN THE TERMINAL BUILDING:** The use, by “LESSEE” its employees, passengers, guests, patrons and invites, in common with others, of all public space in said Terminal Building and all additional public space which may hereafter be made available in said Terminal Building or any other addition thereto; including without limiting the generality hereof, its lobby, waiting rooms, hallways, restrooms, and other public and passenger conveniences.

(E) **PARKING SPACES:** “LESSEE” and its employees free use in common with other airport tenant organizations that may be lessees of space and privileges at the “AIRPORT,” and their employees, of a vehicular parking lot.

(F) **SPACE FOR RADIO RECEIVING AND TRANSMITTING EQUIPMENT:** The full unrestricted and exclusive use of a certain tract of ground, the precise location to be agreed upon by the parties, for the erection, maintenance and operation of the poles, antennae and equipment necessary for the operation of the “LESSEE’S” remote control radio-receiving and transmitting equipment.

(G) **RIGHT OF ACCESS, INGRESS AND EGRESS:** The full and unrestricted access and ingress to and egress from the premises outlined in (A) and (E) above, for “LESSEE,” its employees, passengers, guests, patrons, invites, suppliers of materials and furnishers of service, its or their aircraft, equipment, vehicles, machinery and other property.

ARTICLE II - TERM

“LESSEE” shall have and hold said premises, facilities, rights, licenses, and privileges set forth herein for a term commencing August 1, 2012 and terminating July 31, 2014, with automatic annual renewals, unless sooner terminated as herein provided, and provided further that said lease shall be terminated in the event the “LESSEE’S” authorization to serve the Morgantown Municipal Airport should be suspended by action of the US Department of Transportation or the Federal Aviation Administration.

ARTICLE III - RENTAL AND FEES

“LESSEE” agrees to pay “LESSOR” for the use of the premises, facilities, rights, licenses, services and privileges granted hereunder, the following rentals, fees and charges (there

being no other rentals, fees or charges and no tolls payable by "LESSEE" unless otherwise specifically provided herein); all payable in monthly installments covering the preceding calendar month, and in the event the beginning or termination date with respect to any of the particular premises, facilities, rights licenses, services or privileges as hereinafter provided falls on any date other than the first day of a calendar month, the applicable rentals, fees and charges for that month shall be paid for said month prorated, according to the number of days during that month; and "LESSOR" shall, following the end of each month transmit to "LESSEE" a statement of the rentals, fees and charges incurred by "LESSEE" during said month as hereinafter provided, and the same shall be paid by "LESSEE" within thirty (30) days after receipt of such statement:

(A) **RENT WITH RESPECT TO EXCLUSIVE USE TERMINAL BUILDING SPACE:**

From August 1, 2012 through July 31, 2013, rental in the amount of \$3300.00 per year therefore shall be paid by "LESSEE" for such part of said Terminal Building as is used exclusively hereunder by the "LESSEE" (approximately 295 square feet). Said rental shall be paid in 12 equal monthly installments of \$275.00 each. Any exclusive use space occupied by the "LESSEE" in addition to that originally designated for its use herein shall be rented at a rate to be agreed upon by the parties hereto. The square footage rental fee shall be increased each year by a factor equal to the change in the Consumer Price Index (All Urban Consumers - (CPI-U) U.S. city average All items) from July of the previous year to June of the current year, not to exceed three percent (3%). "LESSOR" will advise "LESSEE" in writing by July 1 each year, of the new square footage rental fee.

(B) RENT WITH RESPECT TO JOINT USE TERMINAL BUILDING SPACE:

From August 1, 2012 through July 31, 2013, rental in the amount of \$6396.00 per year therefore shall be paid by “LESSEE” for such part of said Terminal Building as is used jointly with others authorized to do so (approximately 570 square feet). Said rental shall be paid in 12 monthly installments of \$533.00 each. Any joint use space occupied by the “LESSEE” in addition to that originally designated for its use herein shall be rented at a rate to be agreed upon by the parties hereto. The square footage rental fee shall be increased by a factor equal to the change in the Consumer Price Index (All Urban Consumers - (CPI-U) U.S. city average All items) from July of the previous year to June of the current year, not to exceed three percent (3%).. “LESSOR” will advise “LESSEE” in writing by July 1 each year of the new square footage rental fee.

(C) FEE WITH RESPECT TO “LESSEE’S” SCHEDULED TRIP ARRIVALS

AT THE AIRPORT:

“LESSEE” will furnish to the Airport Manager of the Morgantown Municipal Airport, on forms approved by him, no later than the fifteenth (15th) day of each month, a detailed and itemized record of all landings performed during the preceding month. Said record shall contain the following:

(1) A chronological listing of all landings performed, identified by flight number, date and type of aircraft. If no flight number is assigned, then the registration number of the aircraft shall be listed in lieu thereof.

(2) The certified maximum landing weight of each aircraft performing a landing.

(3) The number of the originating and terminating revenue passengers for the preceding month.

The “LESSOR” shall compute and bill the “LESSEE” once every month the amount due. Payment therefore, shall be made within thirty (30) days after receipt thereof by the carrier. The rate from August 1, 2012 through July 31, 2013 shall be Eighty Seven Cents (\$0.87) per 1,000 pounds of landing weight. Thereafter, the rate will increase Three cents (\$0.03) per 1,000 pounds of landing weight annually.

(D) SERVICES

“LESSOR” acknowledges “LESSEE’s” right to provide fueling, deicing, and other services with its own employees and/or agents. To cover the cost of “LESSOR’s” facilities for this servicing, “LESSEE” will pay “LESSOR” ten cents (\$0.10) per gallon of fuel and/or deicing fluid dispensed at “AIRPORT” as well as “AIRPORT’s” regular parking fees and other charges for overnight or other long term parking of aircraft. “LESSEE” will not provide fueling, deicing, and/or other services to any other entity than its own aircraft.

(E) ADVANCE FUNDING OF AIRPORT CHARGES

“LESSEE” will provide to “LESSOR” a Bond, Letter of Credit, or other instrument to be negotiated, equivalent to three months of Airport charges, to include Terminal Exclusive and Joint Use space, Landing Fees, and anticipate Fuel Usage, within 30 days of the date of this agreement. If “LESSEE” fails to pay any amount due, whether under this lease or other charges for Airport services, “LESSOR” reserves the right to take those funds from the above named instrument after those amounts have been due for ten (10) days. “LESSEE” shall then have ten (10) days to replenish said instrument.

The amount of the instrument will be renegotiated annually based on current rent value, current landing fees, and estimated average monthly fuel purchases.

ARTICLE IV – USE OF AGENTS AND/OR SUBCONTRACTORS

“LESSEE” is authorized to use subcontractors and/or “AGENTS” in place of “LESSEE’S” employed staff in any task normally done by such staff. Use of subcontractor or “AGENT” will be requested in writing at least 30 days prior to beginning use of “AGENT” or changing of “AGENT” and approved by the “AIRPORT” Director, such approval not to reasonably withheld. “LESSEE” is ultimately responsible for all actions of “AGENT” within the “AIRPORT.” “LESSEE” may have “AGENT” represent them to the “AIRPORT” Director for such activities as deemed necessary for the smooth conduct of “LESSEE’S” business and operations at the “AIRPORT.” “LESSEE” retains responsibility for payment of all charges, taxes, and other fees as may be required by this lease or other laws and policies. “LESSEE” shall require “AGENT” to obtain and keep in force insurances similar to those required of “LESSEE” in Article XVII of this agreement for the work that “AGENT” will perform. The “CITY” will be a named additional insured on all such insurance at no charge to the “CITY.” A copy of insurance certificate will be provided to the “AIRPORT” Director.

ARTICLE V - RIGHT TO LEASE PROPERTY

“LESSOR” represents that it has the right to lease said property specified herein as the “AIRPORT,” together with all the facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this lease in respect thereof.

ARTICLE VI - RESPONSIBILITIES OF LESSOR

“LESSOR” agrees during the term of the lease and any rental hereof to maintain and operate with adequate and sufficient personnel and to keep in good repair said **“AIRPORT”** and Terminal Building and the appurtenances, facilities and services now or hereafter and connected therewith, including, without limiting the generality of the foregoing, all appurtenances and facilities which the **“LESSOR”** has agreed hereunder to construct, furnish or supply and to keep said **“AIRPORT”** free from obstructions for the safe, convenient and proper use thereof by **“LESSEE,”** and to maintain and operate said **“AIRPORT”** in all respects in accordance with generally accepted practices of good airport management and Federal Aviation Administration rules, regulations, and requirements.

It is expressly understood that the **“LESSOR”** will keep the public space in the Terminal Building attractively furnished and will provide and supply adequate light, electricity and water for the public space and **“LESSEE’S”** exclusive space therein and heat, ventilation, and air conditioning sufficient to keep the same at all times at a comfortable temperature; janitors or other cleaners necessary to keep the **“AIRPORT”** and said spaces (excepting **“LESSEE’S”** exclusive and joint use space in the present Terminal Building) at all times clean, neat, orderly, sanitary and presentable; police and other guards reasonably necessary to protect the said **“AIRPORT”** and said building or buildings, their appurtenances, facilities and services and all persons and property rightfully thereon; all attendants necessary to facilitate the use of the **“AIRPORT”** and said building or buildings and their appurtenances, facilities and services as aforesaid by any titled hereunder to use the same.

ARTICLE VII - RULES AND REGULATIONS

“LESSOR” shall adopt and enforce reasonable rules and regulations which **“LESSEE”** agrees to observe and obey, with respect to the use of the **“AIRPORT,”** which shall provide for the safety of those using the same; provided, that such rules and regulations shall be consistent with safety and with rules, regulations and orders of the Federal Aviation Administration with respect to aircraft operations at the **“AIRPORT”**; and provided further, that such rules and regulations shall not be inconsistent with the provisions of this agreement or the procedures prescribed or approved from time to time by the Federal Aviation Administration with respect to the operation of **“LESSEE’S”** aircraft at the **“AIRPORT.”**

ARTICLE VIII - DAMAGE OR DESTRUCTION OF BUILDING

If any building of **“LESSOR”** in which **“LESSEE”** occupies space hereunder shall be partially damaged by fire or other casualty but not be rendered untenable, the same shall be repaired with due diligence by the **“LESSOR”** at its own cost and expense. If the damage shall be so extensive as to render the premises untenable and not capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by the **“LESSOR”** at its own cost and expense; and the rent payable hereunder with respect to the **“LESSEE’S”** exclusive space shall be proportionately paid up to such time as the premises shall be in order; and in case said building is completely destroyed by fire or other casualty or so damaged that it will remain untenable for more than thirty (30) days, at the option of the **“LESSEE”** either;

(1) Said building shall be repaired or reconstructed with due diligence by the **“LESSOR”** at its own cost and expense and the rental payable hereunder with respect to **“LESSEE’S”** exclusive space in said building shall be proportionately paid up to the time of

such damage or destruction and shall thenceforth cease until such time as the premises shall be put in order or;

(2) Within sixty (60) days after the time of such damage or destruction and before the said premises shall be put in order, the “LESSEE” shall give the “LESSOR” notice of its intention to cancel this lease or to cancel such part of this lease as related to said building, in which case this lease, or such part of this lease as related only to said building, shall forthwith cease and terminate.

(3) If any building of the “LESSOR” in which “LESSEE” occupies space shall be partially or totally damaged by fire or other casualty, which damages attributable to and proven negligence of the “LESSEE,” then the “LESSEE,” at its own cost and expense, shall within a reasonable time put the premises in the same order as before the damage occurred.

ARTICLE IX - CANCELLATION BY LESSOR

In the event that “LESSEE” shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and “LESSEE” is thereafter adjudicated bankrupt pursuant to such proceedings, or that the court shall take jurisdiction of “LESSEE” and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act, or that a receiver of “LESSEE’S” assets shall be appointed, or that “LESSEE” shall be divested of its estate herein by other operation of law, or that “LESSEE” shall fail to perform, keep and observe any of the terms, covenants or conditions herein contained on the part of “LESSEE” to be performed, kept or observed, the “LESSOR” may give written notice to correct such condition or cure such default, and if any such condition or default shall continue for fifteen (15) days after receipt of such notice by the “LESSEE,” the “LESSOR” may after the lapse of said

fifteen (15) day period and prior to the correction or curing of such condition or default, terminate this lease by a ten (10) day written notice; and the term hereby demised shall thereupon cease and expire at the end of such ten (10) days in the same manner and to the same effect as if it were the expiration of the original term.

The acceptance of rental by **“LESSOR”** for any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by **“LESSEE,”** shall not be deemed a waiver of any right on the part of the **“LESSOR”** to cancel this lease for failure by **“LESSEE”** so to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed. No waiver of default by **“LESSOR”** of any of the terms, covenants or conditions hereof to be performed, kept and observed by **“LESSEE”** shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by **“LESSEE.”**

“LESSOR” reserves the right to terminate this Lease for any reason provided it provides **“LESSEE”** with 60 days prior written notice of the same.

ARTICLE X - CANCELLATION BY LESSEE

“LESSEE,” in addition to any right of cancellation or any other right herein given to **“LESSEE,”** may cancel this agreement, in whole or only insofar as it relates to any building, and terminate all or any of its obligations hereunder at any time, by thirty (30) days written notice, upon or after the happening or any one of the following events;

(1) The failure or refusal of the Federal Government agency with the proper authority to continue to grant **“LESSEE”** the right to operate into and from said **“AIRPORT”**

(2) The termination of **“LESSEE’S”** obligation or right (imposed by contract or otherwise) to the Federal Government for the carriage of United States Air Mail to, from or through the Morgantown Metropolitan area or its environs;

(3) The failure or refusal to designate, or the withdrawal of such designation by the Post Office Department, or any other competent governmental authority, of the Said **“AIRPORT”** as the terminal point for the Morgantown Metropolitan area or its environs, for the receiving and dispatching of the United States air mail;

(4) Issuance by any court of competent jurisdiction of any injunction in any way preventing or restraining the use of said **“AIRPORT”** or any part thereof for airport purposes, and the remaining in force of such injunction for a period of at least thirty (30) days;

(5) Any action of the Federal Aviation Administration refusing to permit **“LESSEE”** to operate into, from or through said **“AIRPORT,”** such aircraft as **“LESSEE”** may reasonably desire to operate thereon;

(6) The breach by **“LESSOR”** of any of the covenants or agreements herein contained and the failure of **“LESSOR”** to remedy such breach for a period of thirty (30) days after receipt of written notice of the existence of such breach;

(7) The inability of **“LESSEE”** to use said premises and facilities continuing for a longer period than thirty (30) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of **“LESSEE”** or due to war, earthquake, or other casualty;

(8) The assumption by the United States Government or any authorized agency thereof of the maintenance and operations of said **“AIRPORT”** and facilities or any substantial part or

parts thereof, the assumption of which limits restricts the **"LESSEE"** from operating its business on said **"AIRPORT."**;

(9) The erection of any obstacle on or in the vicinity of said **"AIRPORT"** which would occasion a modification of **"LESSEE'S"** air carrier operating certificate or similar authorization establishing minimum safety standards for the operation of **"LESSEE."**

No waiver of default by **"LESSEE"** of any of the terms, covenants or conditions hereof to be performed, kept and observed by **"LESSOR"** shall be construed to be or act as waiver by **"LESSEE"** of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by **"LESSOR."**

"LESSEE" shall have the right to terminate this Lease for any reason provided it provides **"LESSOR"** with 60 days prior written notice of the same.

ARTICLE XI - COVENANTS NOT TO GRANT MORE FAVORABLE TERMS

"LESSOR" covenants and agrees not to enter into any lease, contract or agreement with any other air transport operator with respect to the **"AIRPORT"** containing more favorable terms than this lease or to grant to any other air transport operator rights, privileges and concessions with respect to said **"AIRPORT"** which are not accorded to the **"LESSEE"** hereunder unless the same rights, privileges and concession are concurrently and automatically made available to the **"LESSEE."**

ARTICLE XII - SURRENDER OF POSSESSION

"LESSEE" agrees to yield and deliver to **"LESSOR"** possession of the premises leased herein at the termination of this lease, by expiration or otherwise, or of any renewal or extension hereof, in good condition in accordance with its express obligations hereunder only, except for

reasonable wear and tear, fire and other casualty, and “LESSEE” shall have the right at any time during said term any renewal or extension hereof, and for ninety (90) days after the termination hereof, or within such additional time as approved by the “LESSOR” to remove all fixtures and equipment and other property installed or placed by it at its expense in, on or about the premises herein leased. However, “LESSOR” shall not be precluded from exercising its legal rights regarding any valid lien which it may have placed against “LESSEE” for unpaid rents and fees.

ARTICLE XIII - ASSIGNMENT OF LEASE

“LESSEE” shall not at any time assign or sublet this lease or any part thereof without first obtaining the consent in writing of “LESSOR.” Said consent shall not be unreasonably withheld or delayed, provided that the foregoing shall not prevent the assignment of this lease to any corporation with which the “LESSEE” may merge or consolidate or which may succeed to the business or assets of the “LESSEE” or a substantial part thereof.

ARTICLE XIV - NOTICES

Notices to the “LESSOR” provided herein shall be sufficient if sent by registered mail, postage prepaid, addressed to the City Manager, 389 Spruce Street, City of Morgantown, Morgantown, West Virginia, 26505, and notices to the “LESSEE,” if sent by registered mail, postage prepaid, addressed to Silver Airways Corp., 1100 Lee Wagener Blvd. Suite 201, Fort Lauderdale, FL 33315 (954) 985-1500, , or to such other respective address as the parties may designate in writing from time to time.

ARTICLE XV - HEADINGS

The article and paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this lease.

ARTICLE XVI - INVALID PROVISIONS

It is further expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by the court, as set forth in Article XXI, the validity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either the “LESSOR” or the “LESSEE” in their respective rights and obligations contained in the valid covenants, conditions or provisions in this agreement. Nothing in this lease shall be construed to affect the allocation of Federal funds to the “LESSOR” for the improvements to the “AIRPORT.”

ARTICLE XVII - MISCELLANEOUS

PUBLIC LIABILITY - PRODUCTS LIABILITY INSURANCE

“LESSEE” shall indemnify and save harmless the “LESSOR” from any loss or damage and from damage or loss claims against the “LESSOR” during the terms hereof, as a result of any negligence of the “LESSEE,” its agent or employees, committed on or about the demised premises, and for such purposes shall carry adequate public liability, products liability and property damage insurance. Proof of said insurance shall be provided to the “LESSOR” upon written request.

ARTICLE XVIII - RIGHT TO INSPECT LESSEE'S PREMISES

The “LESSOR” shall have the right to inspect “LESSEE’S” premises to determine that such are being maintained in a neat and orderly manner and to require “LESSEE” to make any such change in maintenance or cleaning methods as the “LESSOR” may reasonably deem desirable.

ARTICLE XIX - OTHER CHARGES AND FEES

The “LESSOR” agrees that no charges, fees, or tolls other than herein expressly provided for shall be charged or collected by it from “LESSEE” or any other person, including, without limitation, suppliers of materials or furnishers of service for the privilege of transporting, loading, unloading, or handling persons, property or mail to, from, into or on said “AIRPORT” in connection with “LESSEE’S” business. “LESSEE” shall have the full right of purchasing, at said “AIRPORT,” its requirements of gasoline, fuel, lubricating oil, grease or any other materials or supplies from any person or company of its choice, and no charges, fees or tolls of any kind except as herein expressly set forth shall be charged by “LESSOR,” against “LESSEE” for the privilege of using, storing, withdrawing, handling, consuming or transporting the same to, from or on said “AIRPORT,” except that all storage operations shall be conducted upon premises leased exclusively by the “LESSEE.”

ARTICLE XX - QUIET ENJOYMENT

“LESSOR” agrees that, on payment of the rent and performance of the covenants and agreements on the part of the “LESSEE” to be performed hereunder, “LESSEE” shall peaceably have and enjoy the leased premises and all the rights and privileges of said “AIRPORT,” its appurtenances and facilities.

ARTICLE XXI - RENEGOTIATION

If, at any time during the term of this lease, the “**LESSEE**” shall change its operations at the Morgantown Municipal Airport in such a manner as to cause the “**LESSOR**” to incur substantial additional costs to meet all requirements imposed by any governmental agency, the parties hereto shall, at that time, negotiate the proportion of these costs to be borne by each of the parties to this lease.

ARTICLE XXII – APPLICABLE LAW

This lease agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia. To that end, should there be a need for the litigation of any article or provision contained within this lease, it will be done in the Circuit Court of Monongalia County, West Virginia.

In the presence of:

THE CITY OF MORGANTOWN
WEST VIRGINIA

_____ AS

BY: _____
Terrence Moore, City Manager

TO

ATTEST:

_____ LESSORS

BY: _____
"LESSOR"

In the presence of:

SILVER AIRWAYS, CORP.

_____ AS

BY: Darrell Richardson

TO

ATTEST:

_____ LESSORS

BY: _____
"LESSEE"

STATE OF Florida

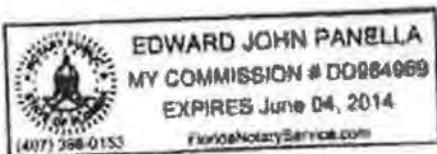
COUNTY OF Broward, To-Wit:

Before me the undersigned Notary Public in and for said county and state, the 12 day of July, 2012, personally appeared the above named

Darrell Richardson and acknowledged the

execution of the within and foregoing instrument to be free and voluntary act of said Colgan Air, Inc., for the uses and purposes therein set out and described.

My Commission Expires: June 04, 2014



Edward Panella
NOTARY PUBLIC

APPENDIX A

Appendix A – Terminal Plans – to be provided.