

**TRUCKEE TAHOE AIRPORT DISTRICT**  
**COMMERCIAL NON- AERONAUTICAL LEASE AGREEMENT**  
**DESIGNBAR HOME FURNISHINGS**

This Lease and Use Agreement (herein referred to as this "Agreement") is made and entered into this 24TH day of August, 2020 by and between the Truckee Tahoe Airport District (herein referred to as "Lessor"), a special district of the State of California (herein referred to as the "State") and DESIGNBAR GROUP INC., a California corporation (herein referred to as "Lessee"). Lessor and Lessee may herein be referred to individually as a "Party" or collectively as the "Parties".

**1. RECITALS**

This Agreement is made with respect to the following facts:

- 1.1. WHEREAS, Lessor is a public agency established and existing under the provisions of the California Airport District Act and is governed in accordance with the California State Public Utilities Code (PUC) 22001 et seq. with the power to carry on its business as it is now being conducted under the statutes of the State;
- 1.2. WHEREAS, Lessor is the owner and operator of the Truckee Tahoe Airport (herein referred to as the "Airport") located in Nevada and Placer Counties, California.
- 1.3. WHEREAS, Lessor is the owner of certain real property described herein as the "Leased Premises";
- 1.4. WHEREAS, Lessee has completed a Lessee and/or Operator Application (herein referred to as "Application") and desires to lease the Leased Premises from Lessor and use the Leased Premises to engage in certain Commercial/Non-Commercial Non-Aeronautical Activities (herein referred to as the "Activities") at the Airport;
- 1.5. WHEREAS, Lessor has accepted Lessee's Application and desires to lease the Leased Premises to Lessee and allow Lessee to use the Leased Premises to engage in certain Activities at the Airport;
- 1.6. WHEREAS, Lessor and Lessee have reached agreement on the key terms and conditions of this Agreement in the Memorandum of Understanding dated the 24TH day of AUGUST, 2020;
- 1.7. WHEREAS, Lessor has adopted Primary Management Compliance Documents for the Airport (herein referred to as the "PMCDs"), a compendium of policies, standards, guidelines, rules, and regulations that govern the operation and management of the Airport, including Rules and Regulations, Leasing/Rents and Fees Policy, and Development Standards;
- 1.8. WHEREAS, the terms identified by use of a capital letter in this Agreement are defined in the PMCDs.

NOW, THEREFORE, for good and valuable consideration of the mutual representations, warranties, covenants, obligations, privileges, conditions, and agreements set forth in this Agreement (herein referred to as the "terms and conditions of this Agreement"), the Parties, intending to incorporate the foregoing Recitals into this Agreement and to be legally bound, hereby agree as follows:

## 2. **LEASED PREMISES.**

- 2.1. **General Description.** Lessor hereby leases to Lessee, certain real property located at the Airport in unincorporated Nevada County, commonly known as WAREHOUSE UNIT B (herein referred to as the “Leased Premises”) and more particularly shown in Exhibit A, attached hereto and by this reference made a part hereof.
- 2.2. **Elements and Improvement Descriptions.** The Leased Premises consists of the following elements and Improvements:

<b>Elements / Improvements</b>	<b>Approximate Square Feet</b>	<b>Notes</b>
Unimproved Land		
Improved Land		
Vehicle Parking		
Office		
Shop		
Warehouse Space/Storage	4,000 SQ/FT	
TOTAL		

- 2.3. **Other Elements or Improvements.** At the time of this Agreement is executed by the Parties, there are no other elements or Improvements located or situated on the Leased Premises.
- 2.4. **Inspection.** Lessee warrants and represents that it has carefully and completely examined and inspected the Leased Premises and fully understands Lessee’s responsibilities and obligations with respect to the Leased Premises and this Agreement. Lessee accepts the Leased Premises in an “as is, where is” condition without representation or warranties from Lessor as to the condition, suitability, or sufficiency of the Leased Premises
- 2.4.1. A CASp can inspect the Leased Premises and determine whether the Leased Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Leased Premises, Lessor may not prohibit Lessee from obtaining a CASp inspection of the Leased Premises for the occupancy or potential occupancy of Lessee, if requested by Lessee. The Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the Leased Premises.

## 3. **USE OF LEASED PREMISES.**

- 3.1. **Permitted Uses and Activities (General).** In addition to Lessor leasing the Leased Premises to Lessee, this Agreement grants Lessee the right and privilege to occupy and use the Leased Premises to engage for the purpose of use in relation to DesignBar Group Inc business activities in the shipping, receiving, inspection and repair of furniture, warehousing/storage of goods, tools and equipment and

any other business related legal use (except retail). The Leased Premises may not be used for any other purposes or uses without the prior written consent of Lessor, which consent may be withheld in the sole and absolute discretion of Lessor.

### **3.2. Permitted Uses and Activities (Commercial Non-Aeronautical Activities).**

- 3.2.1. Lessee **shall**, is required to, use the Leased Premises to provide the following Commercial Non-Aeronautical Activities: Use in relation to DesignBar Group Inc business activities in the shipping, receiving, inspection and repair of furniture, warehousing/storage of goods, tools and equipment and any other business related legal use (except retail). Over the term of the lease agreement, alternate uses (including retail) may be considered. Any alternate use will be agreed upon in writing between the Lessor and Lessee.
- 3.2.2. Lessee **may**, has the option to, use the Leased Premises to provide the following Commercial Non-Aeronautical Activities: general storage of furniture and other items, receiving and inspection of goods.
- 3.2.3. Lessee's right and privilege to use the Leased Premises for engaging in Commercial Non-Aeronautical Activities may be suspended or permanently revoked if Lessee does not comply with the terms and conditions of this Agreement and the PMCDs.

### **3.3. Prohibited Uses and Activities.**

- 3.3.1. Lessee shall not occupy and/or use the Leased Premises for any other purpose or engage in any other Activities from the Leased Premises other than those specifically permitted in this Agreement.
- 3.3.2. Lessee agrees not to occupy and/or use the Leased Premises or engage in Activities in any manner or purpose contrary to this Agreement or any Legal Requirement.
- 3.3.3. In addition to the prohibited Activities identified in this Agreement and the Airport's PMCDs, the following occupancy, uses, and/or purposes are expressly prohibited on the Leased Premises: \_\_\_\_\_ . This is not an exclusive list of prohibited activities.
- 3.3.4. Lessee shall not create, cause, maintain, or permit any public or private nuisance or waste in, on, or about the Leased Premises, or permit or allow the Leased Premises to be occupied or used for any unlawful or immoral purpose.
- 3.3.5. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of neighboring properties either on or off the Airport. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Leased Premises.
- 3.3.6. Lessee shall not allow materials or articles of any nature to be stored outside upon any portion of the Leased Premises.
- 3.3.7. Lessee shall not use Leased Premises in a manner that increases the risk of fire or damage of the Leased Premises or the Improvements thereon and/or increases the existing rates for or cancellation of fire, liability, or

other insurance policies insuring the Leased Premises or the Improvements thereon.

- 3.3.8. Lessee shall not paint, inscribe, or place an unreasonable sign or placard in or on said Leased Premises or the Improvements thereon without the express written consent of the Lessor; and no tree or shrub thereon shall be destroyed or removed (except in connection with Lessee's maintenance of, or modification to, the landscaping) or other waste committed on said Leased Premises.
- 3.3.9. Lessee shall not place or store motorcycles, vehicles, or other mechanical means of transportation anywhere on the Leased Premises, provided that the foregoing shall in no way limit Lessee's rights to use the vehicle parking areas on the Leased Premises for the parking of vehicles. No repair, overhaul, or modification of any vehicle shall take place on the Leased Premises (unless specifically permitted in this Agreement) or the area or street in front of said Leased Premises.
- 3.4. Condition, Use of Leased Premises. Lessor makes no warranty or representation of any kind concerning the condition of the Leased Premises, or the fitness of the Leased Premises for the occupancy, uses, and Activities intended by Lessee and/or permitted by Lessor, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the Parties that Lessee has personally inspected the Leased Premises, knows its condition, finds it fit for Lessee's intended use and Activities, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 3.2.1 and Section 3.2.2. of this Agreement.
- 3.5. Compliance. Lessee's occupancy and use of the Leased Premises and the Airport is subject to the following requirements:
  - 3.5.1. As may be promulgated and/or amended from time to time, Lessee shall comply with all Legal Requirements including (a) the Airport Sponsor Assurances (herein referred to as the "Assurances"); (b) the Lessor's policies, standards, rules, regulations, and directives including the PMCDs; (c) applicable zoning, building, fire, and safety codes; (e) and all other Legal Requirements of any Agency having jurisdiction.
  - 3.5.2. If any provision of this Agreement is found to be in conflict with Section 3.5.1. of this Agreement, the provision that establishes the higher or stricter standard shall prevail. Additionally, Lessor may modify this Agreement to resolve the conflict.
  - 3.5.3. In the event of an alleged violation of Section 3.5.1. of this Agreement (or initiation of an investigation relating too same), Lessee shall immediately notify Lessor of the alleged violation and describe the action(s) being taken to resolve it.
  - 3.5.4. Any violation of (or failure to comply with) Section 3.5.1. of this Agreement shall be construed as a default or breach of this Agreement.
  - 3.5.5. Lessor may deny access, consistent with Legal Requirements, to the Airport or the Leased Premises to Lessee or its representatives, officers, agents, employees, guests, patrons, suppliers, vendors, invitees,

contractors, subcontractors, sublessees, or any other entity for any violation of (or failure to comply with) Section 3.5.1. of this Agreement.

3.5.6. Lessee shall pay any penalties, fines, costs, and expenses, including Lessor's attorney's fees, for any violation of (or failure to comply with) Section 3.5.1. of this Agreement.

3.5.7. If penalties or fines are levied against Lessor or costs or expenses are incurred by Lessor relating to Lessee's violation of (or failure to comply with) Section 3.5.1. of this Agreement, Lessee shall pay Lessor one hundred twenty-five percent (125%) of the penalty, fine, cost, or expense.

#### **4. TERM.**

4.1. Original Term. The original term of this Agreement shall be for five (5) years, commencing at 12:00 a.m. on 24th day of August, 2020 (herein referred to as the "Commencement Date") and ending at 11:59 p.m. on 23rd day of August, 2025 (herein referred to as the "Original Term"), unless sooner terminated in accordance with this Agreement.

4.2. Extension of Term. Lessor and Lessee may mutually agree to renew this lease for one (1) five (5) year optional renewal term ("Extension Term"). If either Party desires to extend the term of this Agreement beyond the Original Term, that Party shall, no later than three hundred sixty-five (365) calendar days prior to the expiration of the Original Term, give written notice to the other Party to such effect and the proposed terms and conditions of the Term Extension. The Parties shall then meet and confer about such Term Extension. Any Term Extension shall be documented in a written amendment to this Agreement.

4.3. Expiration or Termination of Term. Lessee shall, at the expiration of the Original Term or any Extension of Term, or upon its earlier termination, return the Leased Premises in first-class order, repair, and condition and in a safe, clean, orderly, and sanitary condition to the complete satisfaction of Lessor as it is now at the date of this Agreement, ordinary and reasonable wear and tear expected; vacate the Leased Premises; and remove any and all of Lessee's personal property, including equipment, furniture, furnishings, and fixtures.

4.3.1. Not more than thirty (30) days before expiration or termination, Lessee shall allow Lessor to inspect the Leased Premises and complete a walk-through to verify the condition of the Leased Premises.

4.3.2. Lessee shall, at the expiration of the Original Term or any Extension of Term, or upon its earlier termination, if another entity enters into an agreement with Lessor to use and/or occupy the Leased Premises, Lessee shall work with the parties in a cooperative and responsive manner to complete the transition while also ensuring that there is no interruption in the provision of Activities during the transition.

#### **5. RENTS, FEES, AND OTHER CHARGES.**

5.1. Annual Rent. The annual rent for the use and occupancy of the Leased Premises for the first year of the Original Term shall be forty seven thousand and forty dollars (\$47,040). The annual rent is based on the following:

Elements / Improvements	Approximate Square Feet	Rate Per Square Foot Per Annum	Annual Rent
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Unimproved Land			
Improved Land			
Vehicle Parking			
Office			
Shop			
Storage	4,000 SQ/FT	\$11.76 (\$0.98/sq ft/month)	\$47,040 (\$3,920/month)
<b>TOTAL</b>			

- 5.2. Annual Adjustments. Throughout the Original Term and any Term Extension, the annual rent shall be adjusted on an annual basis between each Rent Study (defined herein) in compliance with the Leasing/Rents and Fees Policy. In no event shall rent be adjusted less than the rent paid during the immediately preceding year.
- 5.3. Rent Study Adjustments. The annual rent shall be adjusted every fifth (5<sup>th</sup>) year and every five (5) years thereafter to Market Rent. Adjustments shall be made based on the findings of a Rent Study in compliance with the Leasing/Rents and Fees Policy.
- 5.4. Fees and Other Charges. Lessee shall pay the fees and other charges identified in the Rents and Fees Schedule to Lessor when due and owing, which are subject to change from time to time in compliance with the Leasing/Rents and Fees Policy.
- 5.5. Payments. Payment of rents, fees, and other charges shall be made promptly without notice or demand, in legal tender of the United States of America.
- 5.5.1. Payment of rent shall be made by Lessee to Lessor monthly (in installments equal to 1/12 of the annual rent) in advance on or before the 1<sup>st</sup> day of each month. The rent for any partial month shall be prorated based on a thirty (30) day month.
- 5.5.2. Payment of fees and other charges shall be made by Lessee to Lessor monthly on or before the 10<sup>th</sup> day of each month for the previous month.
- 5.5.3. Payments of rents, fees, and other charges shall be made by check or money order, payable to Lessor. Payments shall be delivered or mailed to Truckee Tahoe Airport District, 10356 Truckee Tahoe Airport Road, Truckee, CA 96161 or to such other location as may be directed in writing by Lessor. Payments shall be made without any abatement, deductions, reductions, offsets, or counterclaims of any kind.
- 5.6. Security Deposit. [OPTION 1] Prior to delivery of possession of the Leased Premises to Lessee, Lessee shall deposit (and keep on account throughout the Original Term or Extension of Term) with Lessor a security and damage deposit (herein referred to as the "Security Deposit") in the amount of seven thousand eight hundred and forty dollars (\$7,840) [or equivalent to two (2) month's rent] as security for the return of the Leased Premises at the expiration of the Original Term or Extension of Term in Premises in first-class order, repair, and condition and in a safe, clean, orderly, and sanitary condition as when Lessee took possession of the Leased Premises, ordinary and reasonable wear and tear excepted, as well as the faithful, timely, and complete performance of the terms and conditions of this Agreement.

- 5.6.1. The Security Deposit shall not be construed as an advance payment of any rents, fees, or other charges due under this Agreement
- 5.6.2. The Security Deposit may be used in the event of termination of this Agreement. The Parties agree that the Security Deposit may be used to cure any default or breach of this Agreement without prejudice to any other remedies available to Lessor and that Lessor may increase the Security Deposit in the event of default or breach.
- 5.6.3. Should the Security Deposit, in partial or whole, be appropriated and applied by the Lessor as herein provided, the Lessee shall, upon written demand of Lessor, forthwith remit to Lessor a sufficient amount of cash to restore said Security Deposit to the original amount. Lessee's failure to do so within five (5) days after receipt of such demand constitutes a material breach of this Agreement.
- 5.6.4. The Parties agree that the Security Deposit shall be increased in proportion to any increases in rents, fees, or other charges.
- 5.7. Performance Bond. [OPTION 2] Prior to taking possession of the Leased Premises, Lessee shall furnish a Performance Bond or personal guarantee in the form acceptable to Lessor in the amount of one hundred percent (100%) of the annual rents, fees, and other charges for the return of the Leased Premises at the expiration of the Original Term or Extension of Term in first-class order, repair, and condition and in a safe, clean, orderly, and sanitary condition as when Lessee took possession of the Leased Premises, ordinary and reasonable wear and tear excepted, as well as the faithful, timely, and complete performance of the terms and conditions of this Agreement.
  - 5.7.1. The Performance Bond may be used in the event of termination of this Agreement. The Parties agree that the Performance Bond may be used to cure any default or breach of this Agreement without prejudice to any other remedies available to Lessor and that Lessor may increase the Performance Bond in the event of default or breach.
  - 5.7.2. The Parties agree that the Performance Bond shall be increased in proportion to any increases in rents, fees, or other charges.
- 5.8. Late Charges. A late charge (as identified in the Rents and Fees Schedule) shall be automatically added to any rents, fees, or other charges due under this Agreement not received by Lessor by the close of business five (5) calendar days after due and owing. Additional late charges shall be imposed for each thirty (30) calendar day period payment remains due and owing. Late charges shall become part of the rents, fees, and other charges due and owing to Lessor.
- 5.9. Default Interest and Collection Costs. In addition to late charges, Lessor shall be entitled to interest at the rate of 10 percent (10%) per annum on rents, fees, or other charges due under this Agreement from the due date until paid plus all costs and expenses incurred by Lessor to collect (or attempt to collect) amounts past due, including without limitation, attorney and court fees, costs, and expenses
- 6. IMPROVEMENTS.**
  - 6.1. Application to Make Improvements. Prior to making any Improvements requiring a building permit (including any additions and alterations to existing Improvements, removal of existing Improvements, major repairs of existing Improvements, or

construction of new Improvements) to the Leased Premises, Lessee shall submit to Lessor for its review and approval detailed plans, designs, and specifications, which shall be prepared by a registered architect and approved by a registered engineer, both licensed in the State. Said plans shall include cost estimates, a project schedule, and a list of the contractors selected by Lessee. If applicable, Lessee shall also complete and include FAA 7460-1 Notice of Proposed Construction Alterations form.

6.2. Written Consent. Lessee shall not make any Improvements to the Leased Premises without the prior written consent of Lessor and in compliance with the Development Standards.

6.2.1. Any Improvements made to the Leased Premises without the prior written consent of Lessor may be removed by Lessor or Lessor may require, by written notice, that Lessee modify the Improvements to Lessor's satisfaction. If Lessee fails to comply with such notice within thirty (30) calendar days, Lessor may affect the removal or modification of said Improvements and Lessee shall pay 125% of the costs and expenses thereof within thirty (30) calendar days upon receipt of an invoice from Lessor.

6.3. Schedule. Within ninety (90) calendar days of Lessor's written consent, Lessee shall make Improvements in conformance with the approved plans, designs, specifications, and schedule and any other terms and conditions of Lessor's written consent.

6.3.1. If the Improvements are not completed in accordance with the schedule (or Improvements have only been partially completed), at Lessor's option, the Improvements that have been made may be removed or demolished by Lessor.

6.4. Compatibility and Compliance. Any Improvements made to the Leased Premises shall be:

6.4.1. compatible with the Airport and associated airspace;

6.4.2. consistent with the Airport's Master Plan, Layout Plan, and the Land Use Plan;

6.4.3. in compliance with 14 CFR Part 77 Safe, Efficient Use, and Preservation of the Navigable Airspace; and

6.4.4. in compliance with Section 3.5.1. of this Agreement.

6.5. Permits. Lessee shall procure all required building, fire, safety, and other permits from federal, state, and local Agencies having jurisdiction.

6.6. Insurance. No Improvements shall be made to the Leased Premises until evidence of required insurance satisfactory to Lessor has been provided. Lessee shall be fully liable for any damages related to making any Improvements.

6.7. Liens. Lessee shall pay all liens, claims, liabilities, and stop notices lawfully made against it by its contractors, subcontractors, material men, and workmen, and all liens, claims, liabilities, and stop notices lawfully made against Lessee by other third persons resulting from, caused by, arising out of, or associated with the Improvements being made to the Leased Premises, and shall cause its contractors, subcontractors, materialmen, and workmen to pay all such liens,

claims, liabilities, and stop notices lawfully made against them. Lessee shall also pay all liens, claims, liabilities, and stop notices held by contractors, subcontractors, materialmen, and workmen and provide proof of payment to Lessor.

- 6.7.1. Notwithstanding circumstances beyond Lessee's control, all Improvements made to the Leased Premises shall be free and clear of mechanics', laborers, or materialmen's liens, claims, liabilities, and stop notices for labor or material.
- 6.7.2. Nothing in this Agreement shall be construed, in any way, to constitute consent to the creation of any liens, claims, liabilities, and stop notices against the Leased Premises or Lessor.
- 6.7.3. Lessee shall have the right to contest the validity or amount of any liens, claims, liabilities, and stop notices, upon giving to Lessor a letter executed by Lessee assuring that the liens, claims, liabilities, and stop notices will be paid, when and to the extent that the liens, claims, liabilities, and stop notices is finally determined to be valid and owing. Lessee's right, however, to contest these liens, claims, liabilities, and stop notices shall not extend beyond the point where Lessor's title to the Leased Premises could be lost. On final determination of the liens, claims, liabilities, and stop notices, Lessee will immediately pay any final judgment rendered, with all property costs and charges, and shall have the liens, claims, liabilities, and stop notices released or judgment satisfied at Lessee's own expense. If Lessee fails to pay the judgment promptly or otherwise fails to prevent any sale, foreclosure, or forfeiture of the Leased Premises because of a liens, claims, liabilities, and stop notices, Lessor shall have the right, upon five (5) days' written notice to Lessee, to pay or prevent this action, and the amount paid by Lessor shall be immediately due and payable to Lessor, and shall bear interest at the rate of ten percent (10%) per annum from the date of payment by Lessor until repayment by Lessee.
- 6.8. Indemnity for Claims. Lessee shall defend and indemnify Lessor against all liens, claims, damages, liabilities, and losses of any type arising out of making Improvements on the Leased Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by Lessor in negotiating, settling, defending, or otherwise protecting against such claims.
- 6.9. Assurance of Completion. Prior to commencement of any alteration or construction expected to cost more than twenty-five thousand dollars (\$25,000), Lessee shall furnish Lessor evidence that assures Lessor that sufficient funds will be available to complete the proposed Improvements being made to the Leased Premises. The amount of such assurance shall be at least the total estimated cost of Improvements. Evidence of such assurance shall take one of the forms set out below and shall guarantee Lessee's full and faithful performance of all of the terms and conditions of this Agreement:
  - 6.9.1. completion bond;
  - 6.9.2. performance, labor and material bonds, supplied by Lessee's contractor or contractors, provided the bonds are issued jointly to Lessee and Lessor;
  - 6.9.3. irrevocable letter of credit from a financial institution;

6.9.4. proof of cash or other liquid assets; or

6.9.5. any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State and be acceptable to Lessor. All bonds and letters of credit shall be in a form acceptable to Lessor, and shall insure faithful and full observance and performance by Lessee of all of the terms and conditions of this Agreement relating to the Improvements being made to the Leased Premises.

6.10. Certificate of Inspection. Upon completion of the Improvements being made to the Leased Premises, Lessee shall submit to Lessor a Certificate of Inspection, verifying that the Improvements were completed in conformance with Title 24 of the California Code of Regulations for non-residential construction.

6.11. As-Built Plans. Upon completion of the Improvements being made to the Leased Premises, Lessee shall provide to Lessor a complete set of reproducible as-built plans and specifications in digital (CAD) format reflecting actual alterations or construction within or upon the leased Premises.

6.12. Reversion of Improvements. Unless otherwise stated in this Agreement, upon expiration of the original term or earlier termination of this Agreement, at Lessor's option, the ownership of Improvements made to the Leased Premises shall revert (transfer) to Lessor or Lessee shall remove and/or demolish any and/or all Improvements (as designated by Lessor) and return the Leased Premises to its original condition and character, ordinary and reasonable wear and tear excepted.

## **7. LESSEE'S RIGHTS AND PRIVILEGES.**

7.1. Use of the Airport. Lessee is allowed to use the Airport and its appurtenances together with all Public Areas and facilities, in common with Lessor and others, on a non-exclusive basis and subject to the terms and conditions of this Agreement, except such land and Improvements specifically leased herein and as may be leased by Lessor to others.

7.1.1. Lessee shall be liable and shall reimburse Lessor for all costs and expenses incurred by Lessor for the repair of any damage caused by Lessee to the Airport and its appurtenances and/or Public Areas or facilities at the Airport, excluding ordinary and reasonable wear and tear.

7.2. Ingress and Egress. Lessee, its representatives, officers, agents, employees, guests, patrons, suppliers, vendors, invitees, contractors, subcontractors, and Sublessees, shall have the right of ingress and egress to and from the Leased Premises. However, if the privileges granted by this provision adversely affect or conflict with others, Lessor shall have the right to restrict and/or limit the manner in which such ingress and/or egress may be exercised.

7.3. Quiet Enjoyment. Subject to the terms and conditions of this Agreement, Lessee shall peacefully and quietly have, hold, and enjoy the Leased Premises free from hindrance or interruption by Lessor. Lessee agrees temporary inconveniences such as noise, disturbances, traffic detours, and the like resulting from, caused by, arising out of, or associated with Lessor's construction, maintenance, and/or repair of Airport improvements or special events shall not constitute a breach of this Section.

7.4. New Locks. Lessee may install new locks on all exterior doors. Lessee shall advise Lessor of such action and shall provide Lessor with keys to said locks. Lessee

shall also deliver to Lessor the old locks with keys. Upon termination, all locks shall become the property of Lessor.

- 7.5. Trade Fixtures. Lessee may from time to time during the Original Term or Extension of Term install or affix equipment, furniture, furnishings, and fixtures on the Leased Premises and use equipment, tools, machinery, or other items of personal property (collectively referred to herein as the "Trade Fixtures") in connection with the permitted uses of the Leased Premises authorized in this Agreement at Lessee's sole cost and expense and sole discretion.

7.5.1. Title to all Trade Fixtures placed by Lessee upon the Leased Premises shall remain in Lessee, and replacements, substitutions, and modifications thereof may be made by Lessee throughout the Original Term or Extension of Term.

7.5.2. As security for Lessee's performance of obligations under this Agreement, Lessee agrees to not place, or have placed, a mortgage, security interest or otherwise encumber all or any portion of the Trade Fixtures. Any right to remove the Trade Fixtures given Lessee by the provisions of Section 7.5. of this Agreement shall be exercisable only if, at the time of the removal, Lessee is not in default or breach in performance of this Agreement. Lessee may, however, at any time Lessee is not in default or breach in performance of this Agreement, trade in or replace any Trade Fixture, free of the security interest created by this Section. This security interest will then attach to the item that replaced the previous Trade Fixture. Upon default or breach in performance of this Agreement, Lessor shall immediately have as to the Trade Fixtures the remedies provided to a secured party under relevant sections of the California Uniform Commercial Code.

7.5.3. Lessor shall have no liability or responsibility for any theft, misappropriation, or damage to any Trade Fixtures placed by Lessee upon the Leased Premises or personal property belonging to Lessee or others.

7.5.4. Lessee may remove such Trade Fixtures upon termination of this Agreement if Lessee is not then in default or breach under this Agreement, provided that Lessee shall repair to the satisfaction of Lessor any damage to the Leased Premises and Improvements caused by such removal and provided that usual and customary lighting, plumbing, and heating fixtures shall remain upon the Leased Premises upon termination of this Agreement.

7.5.5. Any Trade Fixtures that are not removed from the Leased Premises by Lessee at the Termination Date shall be deemed abandoned by Lessee and shall automatically become the property of Lessor as owner of the real property to which they are affixed.

- 7.6. Other.

7.6.1. Unless otherwise stated in this Agreement, Lessee's rights and privileges are limited strictly to the Leased Premises, no other rights or privileges are being granted by Lessor to Lessee for any other premises at the Airport or any other properties owned or leased by Lessee.

- 7.6.2. Unless otherwise stated, this Agreement does not: (a) modify any other agreements between the Parties or (b) extend any rights or privileges to Lessee in any other agreements between the Parties.

**8. LESSOR'S RIGHTS AND PRIVILEGES.**

**8.1. Lessor's Rights.** Lessor reserves the following rights:

- 8.1.1. Nothing contained in this Agreement shall be construed, in any way, to limit the use of the Airport by Lessor, the Police Department or Sheriff's Office, Fire prevention or suppression agency, FAA, or other Agencies performing official duties at the Airport, or others.
- 8.1.2. Lessor reserves the right to designate specific areas of the Airport to be used for specific purposes and/or engaging in specific activities.
- 8.1.3. Lessor reserves the right to develop and make any improvements, repairs, restoration, or replacement on, at, or to the Airport it deems necessary. Lessor will provide advance notice of the date and time of such projects. Lessor shall not be obligated or required to reimburse or compensate Lessee, Sublessee, or any other entities for any cost and/or expense incurred, for any revenue lost, or for any inconvenience that may result from, arise out of, or be associated in any way with such projects.
- 8.1.4. Lessor (and its representatives, officers, officials, employees, agents, and volunteers) shall not be responsible for loss, injury, or damage to persons or property at the Airport resulting from, caused by, arising out of, or associated in any way with any acts of nature, natural disasters, or illegal activity.
- 8.1.5. During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military use of part or all of the Airport and its facilities. If any such agreement is executed, this Agreement or any other agreement between the Parties, insofar as the agreements may be inconsistent with the agreement between Lessor and the United States Government, shall be suspended, without any liability to Lessor.
- 8.1.6. Lessor does not and will not relinquish the right to take any action Lessor considers necessary to protect the aerial approaches of the Airport against obstruction or to prevent any person from erecting or permitting to be erected any facility or structure which, in the opinion of Lessor, might limit the usefulness of the Airport or constitute a hazard to Aircraft.
- 8.1.7. Lessor will not waive any sovereign, governmental, or other immunity to which Lessor may be entitled nor shall any provision of this Agreement or any other agreement between the Parties be so construed.
- 8.1.8. Lessor will not submit to the laws of any state other than those of the State.
- 8.1.9. Lessor is under no obligation to obtain or provide financing or funding, make any improvements to the Airport, and/or facilitate any development proposed by Lessee or others.
- 8.1.10. Lessor reserves the right to take such actions as it may deem necessary to protect the safety and security of the public and the integrity of the PMCDs.

- 8.1.11. Lessor shall have no responsibility or liability to furnish any services to Lessee, however Lessee may request the provision of services and if agreed upon, shall pay Lessor the amount of compensation agreed upon by the Parties.
- 8.1.12. Nothing contained in this Agreement shall be construed, in any way, as restricting or limiting the powers of Lessor to fully exercise its governmental functions and/or authority or fulfill its obligations under the Assurances (or any bond covenants) or comply with applicable Legal Requirements.

8.2. Lessor's Privileges. Lessor shall have the following privileges:

- 8.2.1. Normal Access to the Leased Premises. Lessor, and Lessor's designated agents, representatives, or employees, shall have the right to enter in, upon, or under the Leased Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for reasonable purposes (e.g., (a) to ensure Lessee's compliance with the terms and conditions of this Agreement including, but not limited to, Section 3.5.1. of this Agreement, (b) other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Agreement, (c) to perform Lessor's duties under this Agreement, etc.). Lessor may at any time during the last one hundred twenty (120) calendar days of the Original Term or Extension of Term place on or about the Leased Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.
- 8.2.2. Emergency Access to the Leased Premises. Lessor, and Lessor's designated agents, representatives, or employees, shall have the right to enter the Leased Premises at any time in the event of an apparent or actual emergency (e.g., fire, flood, or failure of an Improvement or utility, etc.).
- 8.2.3. Security Measures. Lessor shall have the right to require a reasonable security system, device, operation, or plan be installed and implemented to protect the Leased Premises, Improvements, and the Airport. Should Lessor, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of any security system, device, operation, or plan and the installation and implementation thereof. Lessee shall obtain Lessor's prior written consent before installing, implementing, or changing any Lessor approved security system, device, operation, or plan.
- 8.2.4. Performance of Acts. All acts performable under this Agreement by Lessor may, at the option of Lessor and without right of objection by Lessee, be performed by a representative of Lessor.
- 8.2.5. Exercising Rights or Privileges. No exercise of any rights or privileges reserved by Lessor shall be deemed or construed, in any way, as grounds for any abatement of rents, fees, or other charges nor serve as the basis for any claim or demand for damages of any nature whatsoever.

9. **LESSEE'S OBLIGATIONS.**

- 9.1. Conduct. Lessee shall be responsible for the conduct, demeanor, and appearance of its representatives, officers, officials, employees, agents, guests, patrons, suppliers, vendors, invitees, volunteers, contractors, subcontractors, sublessees, or any other entity on the Leased Premises. Lessee's personnel shall: (a) be neat, clean, and courteous, (b) not conduct operations in an objectionable manner, and (c) shall wear suitable attire. Upon receipt of a complaint, Lessee shall take action to immediately resolve the complaint. Lessee's personnel shall cooperate with Lessor, its representative's or Agencies in dealing with emergencies on the Leased Premises and at the Airport.

Disturbance. Lessee shall conduct its authorized uses and Activities in an orderly and proper manner so as to not annoy, disturb, or interfere with others. Lessee agrees that it will not in any manner interfere with Aircraft operations or create a hazard to Aircraft, other lessees, or the public. Lessee shall prevent escape of hazardous fumes, odors, smoke, gas, or other hazardous substances from the Leased Premises (or cause or permit to be caused any act that would adversely affect the environment).

9.2. Taxes, Assessments, Levies, Fees, and Other Charges.

- 9.2.1. Payment of Taxes. Lessee shall pay and discharge all taxes, assessments, levies, and other fees (herein referred to as "Taxes"), when due and owing, on or before the last day on which payment may be made without penalty or interest, without offset or abatement, whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity during the Original Term or Extension of Term that are assessed against the Leased Premises or arise because of the occupancy, use, or possession of the Leased Premises including, but not limited to, Taxes on, or which shall be measure by, any rents or rental income, and Taxes on personal property, whether of Lessor or Lessee.
- 9.2.2. Real Property Taxes Defined. The term "real property taxes" as used herein shall mean all Taxes, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to: (a) value, occupancy, use, or possession of the Leased Premises and/or the Improvements; (b) any improvements, furniture, fixtures, equipment, and other real or personal property of Lessee that are an integral part of the Leased Premises; or (c) use of and Activities on the Leased Premises, Improvements, public utilities, or energy within the Leased Premises. The term "real property taxes" shall also mean all Taxes imposed by reason of environmental regulation or other governmental control of the Leased Premises and/or the Improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes or charges now or hereafter imposed upon Lessor as a result of this Agreement, and all costs and fees (including attorneys' fees) incurred by Lessor in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Leased Premises. If any real property taxes are based upon property or rents unrelated to the Leased Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Leased Premises and/or the Improvements, as determined by Lessor, on the basis of the assessor's worksheets or

other available information, shall be included within the meaning of the term "real property taxes."

- 9.2.3. Real Property Taxes. Lessee shall pay, when due and owing, Lessee's share of all real property taxes (as defined in Section 9.3.1. of this Agreement). Lessee's liability to pay real property taxes shall be prorated on the basis of a three hundred sixty-five (365) calendar day year to account for any fraction or portion of a tax year included in the Agreement term at the commencement or expiration of this Agreement.
- 9.2.4. Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.
- 9.2.5. Personal Property Taxes. Lessee shall pay, when due and owing, or if requested by Lessor, reimburse Lessor for, any and all Taxes associated with the personal property contained in the Leased Premises. Lessee recognizes and understands in accepting this Agreement that its interest therein may be subject to a possible possessory interest tax that Lessor or County may impose on such interest and that such Tax payment shall not reduce any rents, fees, or other charges due Lessor hereunder and any such Tax shall be the liability of and be paid by Lessee
- 9.2.6. Instructions and Notices. Lessor agrees to give appropriate written instructions to public authorities for Taxes payable by Lessee to make sure that statements and billings will be mailed directly by public authorities to Lessee at the address set forth in this Agreement. Lessee shall deliver to Lessor, on demand, original receipts or photocopies evidencing payment of all Taxes payable by Lessee. If Lessee fails to pay Taxes on or before the last day on which payment may be made without penalty or interest, other than as provided for in this Section 9.3., Lessor may, but shall not be obligated to, pay those Taxes, together with interest and penalties. Any amounts that Lessor may pay pursuant to this provision, together with interest at the rate of five percent (5%) per annum, shall be repaid to Lessor by Lessee on demand as additional rent.
- 9.2.7. Contest of Taxes. Lessee shall not be required to pay, discharge, or remove any Taxes (including liens, forfeitures, penalties, and interest) against the Leased Premises or any part of the Leased Premises or any Improvements, so long as Lessee diligently and in good faith contests the validity or the legality of Taxes by appropriate legal proceedings, which should prevent the collection of the Taxes contested; provided however, that Lessee, prior to the date that the Taxes is due and payable, shall either have paid it under protest or shall have, (a) in the case of real estate taxes, posted a bond with Lessor sufficient to cover the amount of the taxes and penalties and interest and, (b) in the case of taxes other than real estate taxes, given to Lessor a letter executed by an officer of Lessee assuring Lessor that the Taxes will be paid when and to the extent that the legal proceedings conclude in a final determination that the Taxes is valid, legal, and owing. Upon such final determination, Lessee agrees to immediately pay the contested Taxes and

remove and discharge any lien or forfeiture arising from the prior nonpayment. Any proceedings for contesting the validity, legality, or amount of any Taxes, or to recover any Taxes paid by Lessee, may be brought by Lessee in the name of Lessor or in the name of Lessee, or both, as Lessee deems advisable. Lessor agrees that Lessor will, upon the reasonable request of Lessee, execute or join in the execution of any instrument or document necessary in connection with any proceeding. However, if any proceedings are brought by Lessee, Lessee agrees to indemnify Lessor for all reasonable loss, cost, or expense that may be imposed on Lessor in connection with the proceeding. Lessee's right to contest Taxes as provided in this Agreement shall not extend beyond the point where Lessor's title to the Leased Premises could be lost. In any event, Lessee shall notify Lessor in advance of any Taxes contest proceedings that Tenant intends to initiate, and shall then inform Lessor of all significant developments in the proceedings as they may occur.

- 9.2.8. If Lessee has not paid any Tax required by this Agreement to be paid by Lessee before its delinquency, or if a Tax is contested by Lessee and that Tax has not been paid within thirty (30) days after a final determination of the validity, legality, or amount of the Tax, then Lessor may, but shall not be required to, pay and discharge the Tax. If a Tax, including penalties and interest, are paid by Lessor, the amount of that payment shall be due and payable to Lessor by Lessee with the next succeeding rental installment, and shall bear interest at the rate of ten percent (10%) per annum from the date of the payment by Lessor until repayment by Lessee.
- 9.2.9. If any assessments for Improvements become a lien after the Commencement Date, Lessee shall pay only the installments of the assessments that become due and payable during the Term. On the request of Lessee, Lessor agrees to cooperate or join with Lessee in any application that may be necessary to permit the payment of the assessments in installments.
- 9.2.10. The covenants and agreements to pay Taxes by Lessee in Section 9.3. of this Agreement. shall not be deemed to include the payment of any inheritance, estate, succession, transfer, gift, franchise, corporation, income, or profit tax, or capital levy that is or may be imposed on Lessor. If any excepted Taxes become a lien against the Leased Premises, Lessor agrees to pay and discharge them before foreclosure of the lien or to take the steps analogous to those permitted to Lessee under Section 9.3.8. of this Agreement to contest the Taxes, so long as the steps sufficiently protect Lessee's quiet enjoyment of the Leased Premises. If Lessor fails to pay and discharge those Taxes prior to the institution of proceedings to foreclose the lien, Lessee, at Lessee's sole option, may advance the funds required to pay and discharge the Taxes, together with all penalties and interest, in which event the amount of funds so advanced shall be immediately due and payable from Lessor to Lessee and shall bear interest at the rate of ten percent (10%) per annum from the date of payment by Lessee, until repaid. Alternatively, Lessee may apply the amount advanced to the payment of the next succeeding rental installment or installments otherwise payable to Lessor until the advance, with interest, has been repaid to Lessee; provided, however, that the

rights of Lessee under this Section shall be limited to those instances where the foreclosure or other enforcement of the lien may disturb Lessee's possession and peaceful enjoyment of the Leased Premises.

- 9.3. Maintenance and Repair. Lessee shall, at Lessee's sole risk, cost, and expense, diligently keep and properly maintain, repair, restore, and clean the Leased Premises, the Improvements thereto (or located thereon) including painting, maintenance of landscape areas, pavements, utilities, trash removal, snow removal, and sweeping and its personal property, in first-class order, repair, and condition and in a safe, clean, orderly, and sanitary condition to the complete satisfaction of Lessor, and in compliance with all applicable Legal Requirements, throughout the Original Term or Extension of Term.
- 9.3.1. Lessee shall be responsible for the maintenance, repair, and replacement, at Lessee's sole risk, cost, and expense, all equipment, furniture, furnishings, and trade fixtures upon the Leased Premises required for the maintenance and operation of a first-class business of the type to be conducted pursuant to this Agreement.
- 9.3.2. Lessee shall be responsible for the maintenance, repair, and replacement, at Lessee's sole risk, cost, and expense, of the structures located on the Leased Premises and all the main support systems exclusively serving the Leased Premises, including plumbing (but excluding the portions of the same that are underground), electrical, HVAC, foundation, framing, exterior walls of the Leased Premises, and structural support systems. Lessee will be responsible for the maintenance and repair of the roof. Notwithstanding the foregoing, except to the extent any maintenance, repair, or replacement is made necessary by the negligence of Lessee. Lessor shall be responsible for the replacement of the roof. Lessor shall maintain the roof, mechanical equipment (mechanical door motors and mechanisms), electrical system including lighting and existing heaters. Lessor shall be responsible for plowing and snow removal with the exception of plow accessibility around the entry doorway which is the responsibility of the Lessee. The foregoing is without any additional cost to the Lessee. Lessee shall have no repair or maintenance obligations to the structure of the building other than any damage caused by Lessee.
- 9.3.3. Liens. Lessee further agrees that if and when any repairs, alterations, additions, or betterments shall be made by Lessee as required by this Section, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Leased Premises free and clear of any lien or encumbrance of any kind whatsoever.
- 9.3.4. Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Agreement because of Lessor's failure to keep Leased Premises in first-class order, repair, and repair.
- 9.3.5. In the event Lessee fails to comply with any part of Section 9.4. of this Agreement, Lessor may notify Lessee and if Lessee fails to correct the condition within fourteen (14) calendar days of Lessor's written notice, Lessor may, but is not required to, enter the Leased Premises and perform

any necessary maintenance, repair, restoration, replacement, or cleaning and Lessee shall pay one hundred twenty-five percent (125%) of the costs and expenses thereof to Lessor within fourteen (14) calendar days upon receipt of an invoice from Lessor. The making of such maintenance, repair, restoration, replacement, or cleaning by Lessor shall in no event be construed as a waiver of the duty of Lessee to perform any necessary maintenance, repair, restoration, replacement, or cleaning as provided in this Section.

- 9.4. Utilities. Lessee shall pay all fees and charges, when due and owing, for all utilities (including connections) serving the Leased Premises. Such services shall include, but not be limited to: water, gas, electricity, sewer, telephone, cable, trash collection, snow removal, etc. unless collected and paid by the Lessor.
- 9.5. Costs, Expenses, and Other Charges. Lessee shall pay, when due and owing, all other costs, expenses, and other charges of every kind and nature whatsoever relating to the Leased Premises and/or Lessee's Activities during the Original Term or Extension of Term.
- 9.6. Licenses, Certificates, And Permits. Lessee, at its sole risk, cost, and expense, shall obtain any and all required licenses, certificates, permits, or other authorizations from any and all Agencies having jurisdiction necessary for the uses and Activities authorized in this Agreement. Lessee shall not engage in or permit others to engage in activities on the Leased Premises in violation of any license, certificate, permit, or other authorization. If the attention of Lessee is called to any such violation, Lessee will immediately notify Lessor and cease and desist from and immediately cause to be corrected such violation. Lessee shall pay all penalties, fines, costs, or expenses associated with any such violation or correction.
- 9.7. On-Going Business. Lessee shall be responsible for maintaining an on-going business at the Airport and complying with the PMCDs, currently in effect or as may be amended, throughout the term of this Agreement.
- 9.8. Business Status. Lessee shall notify Lessor immediately of any changes to Lessee's business or corporate structure or status or if Lessee's authorization to conduct business at the Airport, in the State, or in the United States will be (or has been) suspended or revoked.
- 9.9. Signage and Lighting. All signage must be approved in writing by Lessor and shall conform to Section 3.5.1. of this Agreement.
- 9.10. Special Events. Lessee shall not conduct or hold special events without obtaining (a) appropriate permits and approval from the Agencies having jurisdiction and (b) the prior written consent of Lessor.

## **10. REQUIRED FAA CLAUSES.**

### **10.1. Non-Exclusive Use.**

10.1.1. This Agreement and all of the provisions hereof shall be subject to whatever right the United States Government has now or may have in the future or may acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States Government during the time of war or national emergency. If any such agreement is executed, the terms and conditions

of this Agreement shall be subordinate to the provisions of any agreement between Lessor and the United States relative to the Airport.

10.2. Non-Discrimination.

- 10.2.1. Lessee, for itself, its heirs, successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event Improvements are constructed, maintained, or otherwise operated on the Leased Premises described in this Agreement for a purpose for which a Department of Transportation (herein referred to as the "DOT") program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such Improvements in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Legal Requirements may be promulgated or amended from time to time.
- 10.2.2. Notwithstanding any other provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, successors, and assigns, as part of the consideration of this Agreement does hereby agree, as a covenant running with the land, that: (a) no person on the grounds of race, color, religion, sex, familial status, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises; (b) in the construction of any Improvements on, over, or under the Leased Premises, and the furnishing of services therein or thereon, no person on the grounds of race, color, religion, sex, familial status, or national origin shall be excluded from participation in, or denied the benefits of, such activities, or otherwise be subjected to discrimination; (c) in the breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement and to reenter and repossess the Leased Premises and hold the same as if this Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 have been followed and completed, including expiration of appeal rights; (d) Lessee, for itself, its heirs, successors, and assigns, as a part of the consideration hereof, does hereby agree as a covenant running with the land that in the event Improvements are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.
- 10.2.3. Lessee will comply with pertinent statutes, Executive Orders, and such rules as are promulgated or amended from time to time to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates Lessee or its transferee for the period during which federal assistance is provided, or is in the form of personal property or real property or interest therein or structures or Improvements thereon. In these cases, this provision

obligates Lessee or any transferee for the longer of the following periods:  
 (a) the period during which the Leased Premises is used by the Lessor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or  
 (b) the period during which Lessor or any transferee retains ownership or possession of the Leased Premises.

- 10.2.4. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.
- 10.2.5. Lessee agrees it will practice non-discrimination in its activities and will provide Disadvantaged Business Enterprise (herein referred to as a "DBE") participation as required by the Lessor, in order to meet Lessor's goals, or required by the FAA.
- 10.2.6. Lessee shall not discriminate in any manner against any employee or Applicant for employment because of political or religious opinion or affiliation, race, creed, color, national origin, sex, age, or disability and further, Lessee shall include a similar clause in all subcontracts. Lessee agrees Lessor has the right to take such action against Lessee as the government may direct to enforce this provision of this Agreement. Lessee acknowledges that there are other protected classes in the State and that it is required under State law to comply with those requirements.
- 10.2.7. Lessee shall insert Section 10.2.1. through Section 10.2.6. in any Sublease through which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations to the public on the Leased Premises.

## **11. DEFAULTS AND REMEDIES.**

- 11.1. Defaults. In addition to the defaults and breaches identified throughout this Agreement, the occurrence of any one (1) or more of the following events or occurrences shall constitute a material breach of this Agreement by Lessee and, after expiration of any applicable grace period, shall constitute an event of default (herein referred to as an "Event of Default"):
- 11.1.1. The voluntary filing, petition, or application by Lessee under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise.
- 11.1.2. The making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 USC §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) calendar days); the appointment of a trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Leased Premises or of Lessee's interest in this Agreement where possession is not restored to Lessee within thirty (30) calendar days; or the attachment, execution, or other judicial seizure of all or substantially all of Lessee's assets located at or on the Leased Premises or of Lessee's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.
- 11.1.3. The filing of any lien against the Leased Premises resulting from any act, error, omission, or negligence of Lessee which is not discharged or

contested in good faith as determined by Lessor by proper legal proceedings within fourteen (14) calendar days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.

- 11.1.4. The abandonment by Lessee of the Leased Premises (as defined by California Civil Code section 1951.3), the Lessee's absence from the Leased Premises for fourteen (14) consecutive calendar days, or Lessee's failure to maintain [COMMERCIAL LESSEE ONLY] an on-going business on the Leased Premises or at the Airport for a period of fourteen (14) calendar days or more, notwithstanding circumstances beyond Lessee's control.
- 11.1.5. The dispossession of Lessee from the Leased Premises (other than by Lessor) by process of law or otherwise.
- 11.1.6. The transfer of Lessee's interest herein by other operation of law.
- 11.1.7. Lessee becomes in arrears in the payment of rent, fees, or other charges required to be made by Lessee hereunder, as provided in this Agreement, where such failure shall continue for a period of three (3) business days after written notice thereof from Lessor to Lessee. In the event Lessor serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.
- 11.1.8. The falsification by Lessee of any of its records so as to deprive Lessor of any of its rights, privileges, rents, fees, or other charges under this Agreement or any other agreement between the Parties.
- 11.1.9. The failure by Lessee to observe or perform any of the terms and conditions of this Agreement or any other agreement between the Parties in any material respect, which by its nature Lessee has no capacity to cure;
- 11.1.10. The failure by Lessee to observe or perform any of the terms and conditions of this Agreement or any other agreement between the Parties in any material respect where such failure shall continue for a period of three (3) calendar days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than three (3) calendar days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said three (3) calendar day period and thereafter diligently prosecutes such cure to completion.
- 11.1.11. A sale of stock in Lessee's corporation which divests the present stockholders of controlling interest.
- 11.1.12. The sale, assignment, or transfer or the attempted sale, assignment, or transfer of this Agreement by Lessee. Negotiations by Lessee for the sale, assignment, or transfer of this Agreement shall not be construed as an "attempted transfer".
- 11.1.13. Any default or breach of this Agreement by Lessee shall constitute a default or breach by Lessee of all other agreements between the Parties.

- 11.2. Remedies. In the event of an Event of Default by Lessee, Lessor may at any time thereafter, following any notice required by statute, and without limiting Lessor in the exercise of any right or remedy at law or in equity which Lessor may have by reason of such Event of Default:
- 11.2.1. Terminate Lessee's right to occupancy, use, and possession of the Leased Premises by any lawful means, in which case this Agreement shall terminate and Lessee shall immediately and peacefully surrender possession of the Leased Premises and Improvements to Lessor in the same condition as when received, with the exception of ordinary and reasonable wear and tear.
  - 11.2.2. In the event of termination, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's Event of Default including but not limited to: (a) the cost of recovering possession of the Leased Premises and Improvements; (b) expenses of reletting, including necessary renovation and alteration of the Leased Premises and Improvements; (c) reasonable attorneys' and court fees, costs, and expenses; (d) the worth at the time of the award of the unpaid rent, fees, or other charges that had been earned at the time of termination of this Agreement; (e) the fees, costs, and expenses associated with the removal, storage, and/or disposal of personal property from the Leased Premises at Lessee's sole risk, cost, and expense and without any liability to Lessor for resulting damage; and (f) the worth at the time of award of the amount by which the unpaid rent, fees, and other charges for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.
  - 11.2.3. As used in Section 11.2.2. of this Agreement, the worth at the time of award is computed by allowing interest at the rate of five percent (5%) per annum.
  - 11.2.4. Maintain Lessee's right to occupancy, use, and possession of the Leased Premises, in which case this Agreement shall continue in effect whether or not Lessee shall have abandoned the Leased Premises. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Agreement, including the right to recover rent, fees, and other charges as they become due hereunder.
  - 11.2.5. Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State. Lessor shall have all remedies provided by law and equity.
- 11.3. Non-Performance or Delay Default. No failure to perform or delay in performance which is caused by any war, national emergency, act of nature, or natural disaster shall be deemed an event of default or breach.
- 11.4. Continuing Obligations. No termination shall relieve Lessee of the obligation to deliver and perform any outstanding requirements and agreements prior to the effective date of the termination and/or continue to be liable under this Agreement.
- 11.5. No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or Lessee otherwise lawfully takes possession of the Leased Premises by reason of any default or breach of this Agreement by Lessee.

- 11.6. None of the following remedial actions, alone or in combination, shall be construed as an election by Lessor to terminate this Agreement unless Lessor has in fact given Lessee written notice that this Agreement is terminated or unless a court of competent jurisdiction decrees termination of this Agreement: any act by Lessor to maintain or preserve the Leased Premises; any efforts by Lessor to relet the Leased Premises; any re-entry, repossession, or reletting of the Leased Premises; or any re-entry, repossession, or reletting of the Leased Premises by Lessor pursuant to this Section. If Lessor takes any of the previous remedial actions without terminating this Agreement, Lessor may nevertheless at any later time terminate this Agreement by written notice to Lessee.
- 11.7. If Lessor relets the Leased Premises, Lessor shall apply the revenue from the reletting as follows: first, to the payment of any indebtedness other than rent due from Lessee to Lessor; second, to the payment of any cost of reletting, including without limitation finder's fees and leasing commissions; third, to the payment of the cost of any maintenance and repairs to the Leased Premises; and fourth, to the payment of rent and other amounts due and unpaid under this Lease. Lessor shall hold and apply the residue, if any, to payment of future amounts payable under this Lease as the same may become due, and shall be entitled to retain the eventual balance with no liability to Lessee. If the revenue from reletting during any month, after application pursuant to the previous provisions, is less than the sum of (i) Lessor's expenditures for the Leased Premises during that month and (ii) the amounts due from Lessee during that month, Lessee shall pay the deficiency to Lessor immediately upon demand.
- 11.8. After the occurrence of an Event of Default, Lessor, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Lessee. However, Lessor must by prior notice first allow Lessee a reasonable opportunity to cure, except in cases of emergency, where Lessor may proceed without prior notice to Lessee. Lessee shall, upon demand, immediately reimburse Lessor for all costs, including costs of settlements, defense, court costs, and attorney's fees, that Lessor may incur in the course of any cure.
- 11.9. No security or guaranty for the performance of Lessee's obligations that Lessor may now or later hold shall in any way constitute a bar or defense to any action initiated by Lessor for unlawful detainer or for the recovery of the Leased Premises, for enforcement of any obligation of Lessee, or for the recovery of damages caused by a breach of this Lease by Lessee or by an Event of Default.
- 11.10. Except where this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this Lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.

**12. TERMINATION BY LESSEE.**

- 12.1. If Current, in Good Standing, and if the Leased Premises and Improvements are in good condition and subject to providing written notice to Lessor, Lessee may terminate this Agreement after the occurrence of one (1) or more of the following events:
- 12.1.1. permanent abandonment or closure of the Airport;
  - 12.1.2. the lawful assumption by the United States Government, or any authorized Agency of the operation, control, use, or occupancy of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Lessee from conducting the uses or Activities authorized in this Agreement for a period of at least ninety (90) calendar days;
  - 12.1.3. the default or breach by Lessor of any of the terms and conditions of this Agreement required to be performed by Lessor and the failure of Lessor to remedy such default or breach for a period of sixty (60) calendar days after receipt from Lessee of written notice or if unable to be cured within sixty (60) days provided the Lessor commences repairs and diligently pursues; and
  - 12.1.4. in the event of substantial Condemnation or eminent domain which prevents or substantially impairs the conduct of Lessee's Activities and equates to fifty percent (50%) or more of the total Leased Premises. If terminating this Agreement, Lessee shall notify Lessor of termination within thirty (30) calendar days of receiving notice of Condemnation or eminent domain. If Lessee does not notify Lessor of termination, the Condemnation or eminent domain shall be considered a partial acquisition.

**13. CONDEMNATION OR EMINENT DOMAIN.**

- 13.1. General. In the event of the acquisition by Condemnation or the exercise of the power of eminent domain (by any governmental or other permitted Agency to take property for public use) of interest in all or a portion of the Leased Premises during the Original Term or Extension of Term, Lessee shall not institute any action or proceeding or assert any claim against Lessor for Compensation or consideration of any nature whatsoever and any provision contained herein contrary to the provisions of this Section shall have no force or effect.
- 13.1.1. All Compensation or consideration awarded or paid upon a total or partial acquisition of the Leased Premises (which for these purposes shall not include Compensation or consideration from Lessor) shall belong to and be the Property of Lessor without any participation by Lessee.
  - 13.1.2. Nothing contained herein shall be construed or preclude Lessee from recovering directly from the condemning Agency the value of any claim, that may exist, for loss of business, or depreciation, damage, or costs or expenses of removal, or for the value of Lessee's personal Property; provided, however, that no such claim shall diminish or otherwise adversely affect Lessor's award.
- 13.2. Total. In the event of the acquisition by Condemnation or eminent domain of all interest in the Leased Premises during the Original Term or Extension of Term, Lessee's obligation to pay rents, fees, or other charges and the leasehold estate

created shall cease and terminate as of 12:01 a.m. of the date title of the Leased Premises is transferred to the governmental or other permitted Agency taking the Leased Premises for public use.

**13.3. Substantial and Partial.**

13.3.1. In the event of the acquisition by Condemnation or eminent domain of a portion of interest in the Leased Premises during the Original Term or Extension of Term, Lessee's obligation to pay rents, fees, or other charges shall cease and terminate as it pertains to the specific portion of the Leased Premises taken as of 12:01 a.m. of the date title of the Leased Premises is transferred to the governmental or other permitted Agency taking the Leased Premises for public use. In the event of partial Condemnation or eminent domain, rent shall be adjusted accordingly.

13.3.2. If, during the Original Term or Extension of Term, only a part of the Leased Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable or adequate for the purposes for which Lessee was using the Leased Premises prior to the taking, or if the Leased Premises should become unsuitable or inadequate for those purposes by reason of the taking of any other property adjacent to or over the Leased Premises pursuant to any condemnation proceeding, or if by reason of any Legal Requirement the use of the Leased Premises for the purposes specified in this Agreement shall become unlawful, then and after the taking or after the occurrence of other described events, Lessee shall have the option to terminate, and the option can be exercised only after the taking or after the occurrence of other described events by Lessee giving ten (10) days' written notice to Lessor, and rent shall be paid only to the time when Lessee surrenders possession of the Leased Premises.

**14. FORCE MAJEURE.**

14.1. General. If either Party shall be delayed, hindered in, or prevented from, the performance of the terms and conditions of this Agreement by reason of strikes, lockouts, labor disputes, acts of nature, inability to obtain labor, inability to obtain materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the Party (herein referred to as "Permitted Delay"), such Party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay.

14.1.1. Notwithstanding the foregoing, any extension of time sought by Lessee for a Permitted Delay shall be conditioned upon it providing written notice of such Permitted Delay to Lessor within fourteen (14) calendar days of the event causing the Permitted Delay.

14.1.2. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the terms and conditions of this Agreement.

14.1.3. In no event shall Lessee be relieved of its obligations to pay Lessor the rents, fees, or other charges due and owing, as set forth in this Agreement.

**15. WAIVER.**

- 15.1. Waiver by Lessor of one (1) or more term or condition of this Agreement or any default or breach of a term or condition of this Agreement shall not be construed as or constitute a waiver of any other term or condition of this agreement or subsequent default or breach. The subsequent acceptance by a Party of the performance of any term or condition of this Agreement by another Party shall not be deemed to be a waiver of any term or condition of this Agreement.
- 15.2. The exercise of any remedy, right, option, or privilege hereunder by Lessor shall not preclude Lessor from exercising the same or any and all other remedies, rights, options, and privileges hereunder and Lessor's failure to exercise any remedy, right, option, or privilege at law or equity, or otherwise which Lessor may have, shall not be construed as a waiver.
- 15.3. Failure on the part of Lessor to enforce any of the terms and conditions of this Agreement shall not be construed as or constitute a waiver or a relinquishment of the right to enforce such terms and conditions.
- 15.4. The acceptance by Lessor of any payment of rents, fees, or other charges shall not be construed as or constitute a waiver by Lessor of any default or breach by Lessee of any condition, obligation, privileges, or agreement contained herein and shall not be construed as or constitute a waiver of Lessor's right to terminate this Agreement.
- 15.5. Lessee waives any claims against Lessor for loss of anticipated profit in any suit or proceeding involving this Agreement or any part thereof.

## **16. HAZARDOUS MATERIALS.**

- 16.1. Survival Past Termination. The provisions of this Section 16., which govern Lessee's obligations with regard to Hazardous Materials (defined herein) shall survive the expiration of or early termination of the Agreement.
- 16.2. Hazardous Materials Defined. The term "Hazardous Materials" shall mean any toxic or hazardous substance, material, or waste; pollutant or contaminant; or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following Legal Requirements and any and all of those substances included within the definitions of "hazardous substances", "hazardous waste", "hazardous chemical substance or mixture", "imminently hazardous chemical substance or mixture", "toxic substances", "hazardous air pollutant", "toxic pollutant", or "solid waste" in the (a) CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) Proposition 65, Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et

seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said Legal Requirements or any replacement thereof, or as similar terms are defined in the federal, state, and local Legal Requirements. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable federal, state, or local Legal Requirements for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state, or local Legal Requirement or by common law decision, including without limitation: (a) trichloroethylene, tetrachloroethylene, perchloroethylene, and other chlorinated solvents; (b) any petroleum products or fractions thereof; (c) asbestos, (d) polychlorinated biphenyls; (e) flammable explosives; (f) urea formaldehyde; and (g) radioactive materials and waste.

16.3. Compliance Regarding Hazardous Materials.

16.3.1. Lessee shall not cause or permit any Hazardous Materials to be brought upon, kept, or used in, on, under, around, or about the Leased Premises by Lessee, its agents, employees, contractors, or invitees

16.3.2. Lessee shall comply and cause all occupants of the Leased Premises to comply, with all Legal Requirements governing or applicable to Hazardous Materials as well as the recommendations of any qualified environmental engineer or other expert which apply or pertain to the Leased Premises. Lessee acknowledges that Hazardous Materials may permanently and materially impair the value and use of the Leased Premises.

16.3.3. Lessee shall not allow the installation, release or storage of Hazardous Materials in, on, under or from the Leased Premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of Hazardous Materials.

16.4. Termination of Agreement. Lessor shall have the right to terminate the Agreement in Lessor's sole and absolute discretion in the event that: (a) any anticipated use of the Leased Premises involves the generation or storage, use, treatment, disposal, or release of Hazardous Materials in a manner or for a purpose prohibited or regulated by any Agency, authority, or Hazardous Materials Legal Requirements; (b) Lessee has been required by any lender or Agency to take remedial action in connection with Hazardous Materials contaminating the Leased Premises, if the contamination resulted from use of the Leased Premises; or (c) Lessee is subject to an enforcement order issued by any Agency in connection with the release, use, disposal, or storage of a Hazardous Materials on the Leased Premises, if the contamination resulted from use of the Leased Premises.

16.5. Assignment and Subleasing. It shall not be unreasonable for Lessor to withhold its consent to an assignment or subleasing to such proposed assignee or sublessee if: (a) any anticipated use of the Leased Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Materials in a manner or for any purpose; (b) the proposed assignee or sublessee has been required by any prior landlord, lender, or Agency to take remedial action in connection with Hazardous Materials contaminating a property, if the contamination resulted from such party's action or use of the property in

question; or (c) the proposed assignee or sublessee is subject to an enforcement order issued by any Agency in connection with the release, use, disposal, or storage of Hazardous Materials.

16.6. Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor in the exercise of its reasonable judgment), protect, and hold Lessor harmless from and against any and all claims, liabilities, actions, foreseeable and unforeseeable consequential damages, penalties, forfeitures, losses, costs, and/or expenses, including without limitation, diminution in value of the Leased Premises or Improvements, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Leased Premises, damages arising from any adverse impact or marketing of the Leased Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, soil, soil vapor, sewer systems, and atmosphere), arising from, caused, or resulting, either prior to or during the Agreement term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, around, or about the Leased Premises by Lessee, Lessee's agents, employees, licensees, or invitees or at Lessee's direction, of Hazardous Materials, or by Lessee's failure to comply with any Hazardous Materials Legal Requirements, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors, or subcontractors of Lessee (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to Lessee. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup, remedial, removal, restoration, detoxification, or decontamination of the Leased Premises, and the presence and implementation of any closure, remedial action or other required plans. In the alternative, Lessor may elect to conduct its own defense at the expense of Lessee.

16.7. Notice Regarding Hazardous Materials.

16.7.1. Lessee shall promptly notify Lessor if it knows, suspects or believes, there may be any Hazardous Materials in, on, under, around, or about the Leased Premises, or in the soil, groundwater, or soil vapor on or under the property, or that Lessee or the Leased Premises may be subject to any threatened or pending investigation by any Agency under any Legal Requirements pertaining to any Hazardous Materials.

16.7.2. Lessee shall give written notice to the Lessor within ten (10) business days of receipt of such knowledge or cause for belief. Provided, however, if Lessee knows, or has reasonable cause to believe that such Hazardous Materials is an imminent and substantial danger to public health and safety, Lessee shall notify the Lessor immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. Lessee will notify the Lessor immediately of any notice of violation received or initiation of environmental action or private suits relative to the Leased Premises.

- 16.8. Site Visits, Observations, and Testing. Lessor and its agents and representatives shall have the right at any reasonable time to enter and visit the Leased Premises for the purposes of observing the Leased Premises, taking and removing solid or groundwater samples, and conducting tests on any part of the Leased Premises. Such entry shall be during normal business hours except for emergencies. Lessor is under no duty, however, to visit or observe the Leased Premises or to conduct tests. No site visit, observation or testing by Lessor shall result in a waiver of any default of Lessee or impose any liability on Lessor. In no event shall any site visit, observation, or testing by Lessor be a representation that Hazardous Materials are or are not present in, on, under, around, or about the Leased Premises, or that there has been compliance with any Legal Requirement pertaining to Hazardous Materials or any other applicable Legal Requirement. Neither Lessee nor any other party is entitled to rely on any site visit, observation, or testing by Lessor. Lessor shall not be obligated to disclose to Lessee or any other party any report or finding made as a result of, or in connection with, any site visit, observation or testing by Lessor. In each instance, Lessor shall give Lessee reasonable notice before entering the Leased Premises or any other place Lessor is permitted to enter under this Section. Lessor shall make reasonable efforts to avoid interfering with Lessee's occupancy and use of the Leased Premises or any other property in exercising any right provided in this Section.
- 16.9. Right to Perform Tests. At any time prior to the termination of the Agreement, Lessor shall have the right to enter upon the Leased Premises in order to conduct tests of water and soil.

**17. RESERVATION OF AVIGATIONAL EASEMENT.**

- 17.1. Avigation Easement. Lessor hereby reserves to itself and its successors and assignees, for the use and benefits of the public, a right of avigation over the Leased Premises for the passage of Aircraft landing at, taking off, or operating from the Airport. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any Aircraft used for navigation or flight through the said airspace or landing at, taking off from or operating on the Airport. For the purpose of this Agreement, all rights reserved pursuant to this Section 17. are referred to collectively herein as the "Avigation Easement." This Avigation Easement shall not operate to deprive Lessee, its agents, contractors, directors, employees, officers, and representatives, of any rights which Lessee, its agents, contractors, directors, employees, officers, and representatives, may from time to time have against any operator of Aircraft or third parties responsible for any act or omission respecting the operation of Aircraft. The Avigation Easement includes:
- 17.1.1. For the use and benefit of the public, the easement and continuing right to fly, or cause or permit the flight by any and all persons, or any aircraft, of any and all kinds now or hereafter known, in, through, across, or about any portion of the airspace associated with the Airport;
- 17.1.2. The easement and right to cause or create, or permit or allow to be caused and created within all space above the existing surface of the Leased Premises and any all airspace laterally adjacent to the Leased Premises, such noise, vibration, currents, fumes, dust and fuel particle emissions and other effects of air illumination and fuel consumption as may be inherent in, or may arise or occur from or during the operation of aircraft and any and all kinds, now or hereafter known or used, for navigation of or flight in air;

- 17.1.3. A continuing right to clear and keep clear from the airspace any portions of buildings, structures, or improvements of any kind, and of trees or other objects, including the right to remove or demolish those portions of such buildings, structures, improvements, trees, or other things which extend into or above said airspace, and the right to cut to the ground level and remove, any trees which extend into or above the airspace;
- 17.1.4. The right to prohibit electrical interference, glare, misleading lights, visual impairments, and other hazards to Aircraft flight from being created on the Leased Premises;
- 17.1.5. The right to mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, any and all buildings, structures, or other improvements, and trees or other objects, which extend into or above the airspace; and
- 17.1.6. The right of ingress to, passage within, and egress from the Leased Premises for the purposes described in Sections 17.1.3., 17.1.4., and 17.4.5. above at reasonable times and after proper advance notice.
- 17.1.7. The easements and rights-of-way herein granted shall be deemed both appurtenant to and for the direct benefit of that real property which constitutes the Truckee Tahoe Airport, in the Counties of Placer and Nevada, State of California; and shall further be deemed in gross, being conveyed to the Lessee for the benefit Lessee and any and all members of the general public who may use said easement or right-of-way, in landing at, taking off from or operating such Aircraft in or about the Airport, or in otherwise flying through said airspace.
- 17.1.8. This grant of easement shall not operate to deprive the Lessor, its successors or assigns of any rights which may from time to time have against any Aircraft owner or operator for negligent or unlawful operation of Aircraft.
- 17.2. Lessee's Assumption of Risk. As between Lessee and Lessor, Lessee agrees to voluntarily assume all risk of loss, damage, or injury to the person and property of Lessee (including the right of Lessee to occupy the Leased Premises), its agents, contractors, directors, employees, officers, and representatives, in or about the Airport or the Leased Premises which may be caused by or arise or occur in any manner:
  - 17.2.1. from the flight of any Aircraft of any and all kinds now or hereafter flown in, through, across, or about any portion of the air space over the Airport or the Leased Premises or
  - 17.2.2. from noise, vibration, currents, and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during such flight, or from or during the use by Aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up, and take-off of such Aircraft, and the approach and departure of Aircraft to or from the Airport.

This provision does not waive Lessee's right against third parties arising from such third parties' action or inaction.

- 17.3. Waiver and Release. Lessee hereby waives and releases Lessor, its agents, contractors, directors, employees, officers, and representatives, from any and all claims or causes of action which it may now or hereafter have against Lessor, its agents, contractors, directors, employees, officers, and representatives, for any such loss, damage, or injury as it pertains to this reservation of Avigation Easement.

**18. AMERICANS WITH DISABILITIES ACT.**

- 18.1. Lessee shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 and California Civil Code Sections 54 et seq. (herein referred to collectively as the "ADA"), as amended from time to time, with respect to the Leased Premises and its Activities at the Airport. Lessee shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Lessee shall deliver to Lessor, upon Lessor's request, a copy of each such workplan. Lessor's approval of or acceptance of any aspect of Lessee's Activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity, or practice complies with the ADA. Pursuant to Section 21 of this Agreement, Lessee agrees to indemnify, defend, and hold Lessor harmless from any and all costs incurred by Lessor with respect to Lessee's failure to comply with the ADA as it applies to Lessee's uses of the Leased Premises and Activities at the Airport.

**19. INSURANCE.**

- 19.1. Procurement. Lessee shall procure, maintain, and pay, at Lessee's sole cost and expense, all insurance coverages, limits, and premiums required by this Agreement, the PMCDs, and Legal Requirements throughout the Original Term or Extension of Term.
- 19.1.1. Lessee's responsibility for the Leased Premises and associated uses and Activities begins immediately upon delivery of the Leased Premises.
- 19.1.2. The procuring of such insurance coverages and limits shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification terms and conditions of this Agreement. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Agreement or with use or occupancy of the Leased Premises, except to the extent caused by the active negligence or willful misconduct of Lessor or Lessor's representatives, officers, officials, employees, agents, and volunteers.
- 19.2. Coverages. Insurance coverages shall be kept in full force and effect at all times during the Original Term or Extension of Term in limits and in a form acceptable to Lessor as set forth in Exhibit B, attached hereto and incorporated herein by reference, as may be amended from time to time. The policies shall include the required endorsements, certificates of insurance, and coverage verifications as described in Exhibit B.
- 19.2.1. Lessor retains the right at any time to review the coverage, form, and limits of the insurance required hereby. If, in the opinion of Lessor's Director of Finance & Administration (or comparable official), the insurance terms and conditions in this Agreement do not provide adequate protection for Lessor and for members of the public using the Leased Premises, Lessor

may require Lessee to obtain insurance sufficient in coverage, form, and limits to provide adequate protection as determined by Lessor's Risk Manager. Lessor's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

- 19.2.2. Lessor shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with Lessor incorporating such changes within sixty (60) calendar days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this Agreement without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Agreement at the option of Lessor.
- 19.3. Additional Insured. The insurance set forth in Exhibit B shall name Lessor as an additional insured.
- 19.4. Insurance Companies. Any insurance required under this Section shall be written by insurance companies authorized to do business in the State. Lessee will instruct Lessee's insurance broker to provide at least thirty (30) calendar days' prior written notice of cancellation to Lessor.
- 19.5. Lessor Insurance. [OPTIONAL] During the Original Term or Extension of Term, Lessor shall keep the Leased Premises insured against loss or damage by fire, with extended coverage and vandalism, malicious mischief and special extended perils (all risk) endorsements or their equivalents, in amounts not less than one hundred percent (100%) of the replacement cost of the Leased Premises and Improvements insured, and with commercially reasonable deductibles.
- 19.6. Certificates of Insurance. Lessee shall deposit with Lessor, on or before (a) the effective date of this Agreement and (b) issuance, reinsurance, or renewal of any insurance, certificates of insurance necessary to satisfy Lessor that the insurance provisions of this Agreement have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with Lessor during the entire Original Term or Extension of Term. Should Lessee not provide evidence of such required coverage at least three (3) calendar days prior to the expiration of any existing insurance coverage, Lessor may purchase such insurance, on behalf of and at the expense of Lessee to provide six (6) months of coverage. Upon request by Lessor, Lessee shall provide a duplicate copy of the policy or policies to Lessor.
- 19.7. Recourse. Companies issuing the insurance policies shall have no recourse against Lessor for payment of premiums or assessments for any deductibles that are the responsibility of Lessee.
- 19.8. Waiver. Lessee and Lessor each waives any and all rights of recovery against the other, or against the representatives, officers, officials, employees, agents, and volunteers of the other, for the loss of or damage to such waiving party or the Property of others under its control, where such loss or damage is insured against under any Property insurance policy in force at the time of such loss or damage. Lessee and Lessor shall give notice to respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the Agreement.

## **20. DAMAGE, DESTRUCTION, AND TERMINATION.**

- 20.1. Nontermination and Nonabatement. Except as provided herein, no destruction or damage, whether totally or partially, to the Leased Premises by fire, windstorm, earthquake, accumulation of snow, or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Agreement. Lessor and Lessee waive the provisions of any statutes which relate to termination of an Agreement when leased property is destroyed and agree that such event shall be governed by the terms and conditions of this Agreement.
- 20.2. Damage or Destruction by Lessee. If any part of the Leased Premises, the Airport, or associated Improvements is damaged or destroyed, whether totally or partially, by Lessee, its representatives, officers, agents, employees, guests, patrons, suppliers, vendors, invitees, contractors, subcontractors, or Sublessees, Lessee, at their own cost and expense and in compliance with current building codes, shall diligently, properly, and promptly repair, restore, reconstruct, or replace to the condition and character of the Leased Premises, the Airport, or associated Improvements immediately prior to damage or destruction.
- 20.2.1. If Lessee fails to comply with Section 20.2. of this Agreement Lessor may, at its own discretion, repair, restore, reconstruct, or replace the Leased Premises, the Airport, or associated Improvements. Lessee shall pay Lessor, upon demand, one hundred twenty-five (125%) of the amount that Lessor expended to repair, restore, reconstruct, or replace the damaged or destroyed part of the Leased Premises, the Airport, or associated Improvements.
- 20.3. Lessor Responsibility. If at any time during the Original Term or Extension of Term, any part of the Leased Premises is damaged or destroyed, Lessor shall be under no obligation to repair, restore, reconstruct, or replace the damaged or destroyed portion of the Leased Premises unless Lessor is responsible for such damage or destruction.
- 20.4. Destruction Due to Risk Covered by Insurance. If, during the Original Term or Extension of Term, the Leased Premises are totally or partially destroyed from a risk covered by the insurance described in Section 19. Insurance. of this Agreement, rendering the Leased Premises totally or partially inaccessible or unusable, Lessee shall restore the Leased Premises to substantially the same condition as it was in immediately before destruction, and in compliance with current building codes, but only to the extent of insurance proceeds actually received. Such destruction shall not terminate this Agreement. If the laws existing at that time do not permit the restoration, either Party can terminate this Agreement immediately by giving notice to the other Party.
- 20.4.1. Minor Loss. If, during the Original Term or Extension of Term, the Leased Premises are destroyed from a risk covered by the insurance described in Section 19. Insurance. of this Agreement, and the total amount of loss does not exceed one hundred thousand dollars (\$100,000), Lessee shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Lessee for the sole purpose of making the restoration of the Leased Premises in accordance with this Agreement.
- 20.4.2. Major Loss-Insurance Trustee. If, during the Original Term or Extension of Term, the Leased Premises are destroyed from a risk covered by the

insurance described in Section 19. Insurance. of this Agreement, and the total amount of loss exceeds the amount set forth in Section 20.4.1. of this Agreement, Lessee shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company as may be jointly selected by the Parties (herein referred to as the "Insurance Trustee"), and funds shall be disbursed by the Insurance Trustee pursuant to the procedures set forth in Section 20.5. of this Agreement.

20.5. Destruction Due to Risk Not Covered by Insurance. If, during the Original Term or Extension of Term, the Leased Premises are totally or partially damaged or destroyed from a risk not covered by the insurance described in Section 19. Insurance. of this Agreement, rendering the Leased Premises totally or partially inaccessible or unusable, Lessee shall restore the Leased Premises to substantially the same condition as it was in immediately before destruction, and in compliance with current building codes, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Agreement. If the laws existing at that time do not permit the restoration, either party can terminate this Agreement immediately by giving notice to the other party.

20.5.1. If the cost of restoration exceeds twenty-five percent (25%) of the then replacement value of the Leased Premises totally or partially damaged or destroyed, Lessee can elect to terminate this Agreement by giving notice to Lessor within sixty (60) calendar days after determining the restoration cost and replacement value. If Lessee elects to terminate this Agreement, Lessor, within thirty (30) calendar days after receiving Lessee's notice to terminate, can elect to pay to Lessee, at the time Lessor notifies Lessee of its election, the difference between twenty-five percent (25%) of the replacement value of the Leased Premises and the actual cost of restoration, in which case Lessee shall restore the Leased Premises. On Lessor's making its election to contribute, each Party shall deposit immediately the amount of its contribution with an Insurance Trustee. If the Destruction does not exceed twenty-five percent (25%) of the then replacement value of the Leased Premises but does exceed one hundred thousand dollars (\$100,000), Lessee shall immediately deposit the cost of restoration with the Insurance Trustee. This Agreement shall terminate if Lessee elects to terminate this Agreement and Lessor does not elect to contribute toward the cost of restoration as provided in this Section.

20.5.2. If the Leased Premises are destroyed from a risk not covered by the insurance described in Section 19. Insurance. of this Agreement, and Lessee has the obligation to restore the Leased Premises as provided in Section 20.4.2. of this Agreement, both Parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

- The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Lessee as construction progresses, for payment of the cost of Restoration. A five percent (5%) retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Leased Premises are free of all mechanics' liens and lienable claims.
- Payments shall be made on presentation of certificates or vouchers from the architect, engineer, or project manager retained by Lessee showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect, engineer, or project manager to supervise construction and to make payments on certificates or vouchers approved by the architect, engineer, or project manager retained by the Insurance Trustee. The reasonable expenses and charges of the architect, engineer, or project manager retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund. The Parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this Section.
- If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration Lessee shall deposit the amount of the deficiency with the Insurance Trustee within fifteen (15) calendar days after request by the Insurance Trustee indicating the amount of the deficiency. Any undisbursed funds after compliance with the provisions of this Section shall be delivered to Lessor to the extent of Lessor's contribution to the fund, and the balance, if any, shall be paid to Lessee. All actual costs and charges of the Insurance Trustee shall be paid by Lessee.
- If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, a new trustee shall be jointly selected by the Parties and shall be substituted in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

20.6. Procedure for Restoring Leased Premises. When Lessee is obligated to restore the Leased Premises, within ninety (90) days Lessee at its cost shall prepare final plans, specifications, and working drawings complying with applicable Legal Requirements that will be necessary for restoration of the Leased Premises and shall deliver the same to Lessor for approval. The plans, specifications, and working drawings must be approved by Lessor, such approval not to be unreasonably withheld, conditioned, or delayed. Lessor shall have thirty (30) days after receipt of the plans, specifications, and working drawings to either approve or disapprove the plans, specifications, and working drawings and return them to Lessee. If Lessor disapproves the plans, specifications, and working drawings, Lessor shall notify Lessee of its objections and Lessor's proposed solution to each objection. Lessee acknowledges that the plans, specifications, and working drawings shall be subject to approval of the appropriate Agencies and that they will be prepared in such a manner as to obtain that approval. The restoration shall be accomplished as follows:

- 20.6.1. Lessee shall make commercially reasonable efforts to complete the restoration within one hundred eighty (180) calendar days after final plans, specifications, and working drawings have been approved by the appropriate Agencies and all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Lessee's reasonable control).
- 20.6.2. Lessee shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section 19. Insurance of this Agreement. Such insurance shall contain waiver of subrogation clauses in favor of Lessor and Lessee in accordance with the provisions of Exhibit B.
- 20.6.3. Lessee shall notify Lessor of the date of commencement of the restoration at least ten (10) business days before commencement of the restoration to enable Lessor to post and record notices of nonresponsibility. The contractor retained by Lessee shall not commence construction until a completion bond and a labor and materials bond have been delivered to Lessor to insure completion of the construction.
- 20.6.4. Lessee shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption on the Leased Premises and at the Airport.
- 20.6.5. On completion of the restoration Lessee shall immediately record a notice of completion in the county in which the Leased Premises are located.
- 20.6.6. If funds are required to be deposited with an Insurance Trustee as required by this Section 20 of this Agreement, the restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this Section 20.

## **21. HOLD HARMLESS AND INDEMNIFICATION.**

- 21.1. Lessee Indemnification. Lessee shall defend, indemnify, save, protect, and hold harmless Lessor, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers from and against (and reimburse Lessor for) any and all actual or alleged claims, demands, causes of action of any nature, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, environmental costs, and/or penalties (collectively referred to as costs) which may be imposed upon, claimed against or incurred or suffered by Lessor and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, except to the extent resulting from Lessor's negligence or willful misconduct: (a) any act, error, omission, or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees, or contractors, (b) any occupation or use, management, or control of the Leased Premises, whether or not due to Lessee or Lessee's own act, error, omission, or negligence (c) any condition created in, on, or about the Leased Premises after the effective date, and (d) any breach, violation, or nonperformance of the Lessee or the Lessee's obligations under this Agreement or any other agreement between the Parties.

- 21.1.1. In the event a party indemnified hereunder is responsible, in part, for the loss, the indemnitor shall not be relieved of the obligation to indemnify; however, in such a case, liability shall be shared in accordance with the State's principles of comparative fault.
- 21.2. Lessor Indemnification. Lessor shall defend, indemnify, save, protect, and hold harmless Lessee, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers from and against (and reimburse Lessee for) any and all actual or alleged claims, demands, causes of action of any nature, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, environmental costs, and/or penalties (collectively referred to as costs) which may be imposed upon, claimed against or incurred or suffered by Lessee and which, in whole or in part, directly or indirectly, arise from or are in any way connected with injury to or death of persons or loss of or damage to property occurring on or about the Leased Premises that grow out of or are connected with Lessee's occupation and use of the Leased Premises or the condition of the Leased Premises that grow out of or are connected with the negligence or willful misconduct of Lessor or Lessor's agents, employees, or contractors.
- 21.3. Environmental Indemnification. Notwithstanding any other provisions of this Agreement, in the event of an environmental Legal Requirement violation or an environmental contaminating accident or incident caused by Lessee or Lessee's employees, vendors, suppliers, contractors, or any other entity associated with Lessee or in the event any of these entities violates any environmental Legal Requirement, Lessee shall accept total responsibility and shall defend, indemnify, save, protect, and hold harmless Lessor, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers.
- 21.4. Waiver of Claims. Lessee waives any claims against Lessor for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Leased Premises, from any cause whatsoever, except to the extent caused by the active negligence or willful misconduct of Lessor or Lessor's officers, agents, contractors, volunteers, and employees.
- 21.5. Non-Waiver of Protections. Nothing herein shall constitute a waiver of any protection available to Lessor, individually and collectively, and its representatives, officers, officials, employees, agent, and volunteers under the State's sovereign, governmental, or other immunity acts or similar statutory provisions.
- 22. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF LESSOR.**
- 22.1. No official or employee of Lessor shall be personally liable for any default or liability under this Agreement.
- 23. SUBLEASING.**
- 23.1. Lessee shall not sublease any portion of the Leased Premises without the prior written consent of Lessor.
- 23.1.1. Lessee shall submit the written agreement between Lessee and the sublessee to Lessor for review and evaluation. Lessor may require that an application be completed and all relevant and applicable information relating to the requested sublease be provided to Lessor for review and evaluation.

23.1.2. A sublease made contrary to the requirements of this Section 23. shall be null and void. Unless otherwise stated in the written consent, a sublease is subordinate (subject) to all of the terms and conditions of this Agreement.

23.1.3. Sublessee may not occupy the Leased Premises before Lessor consents to the sublease in writing.

## **24. SALE, ASSIGNMENT, OR TRANSFER.**

24.1. Lessor Consent. Lessee shall not sell, assign, transfer, or hypothecate its interest in the Leased Premises or this Agreement, in whole or in part, without the prior written consent of Lessor.

24.1.1. Consent by Lessor to one sale, assignment, transfer, or hypothecation shall not be deemed to be consent to any subsequent sale, assignment, transfer, or hypothecation.

24.1.2. Any such sale, assignment, transfer, or hypothecation without Lessor's prior written consent shall be null and void and, at Lessor's option, shall constitute a default or breach of this Agreement.

24.1.3. Dissolution of Lessee or the transfer of thirty-three percent (33%) or more of its outstanding stock, equity, or certificates of membership or interest to any single entity or party shall be deemed a sale, assignment, or transfer under this Agreement.

24.2. Consent Not Required. Subject to the provisions of Section 30.2. of this Agreement, Lessee may assign this Agreement without Lessor's written consent if the assignment is made to a wholly-owned subsidiary of Lessee.

24.3. Lessee's Continued Liability. In the event Lessee's interest in the Leased Premises or this Agreement is sold, assigned, transferred, hypothecated, in whole or in part, Lessee shall remain liable to Lessor for the payment of rents, fees, and/or other charges not paid by the assignee when due and owing.

24.4. Assignee Restrictions. The assignee shall not sell, assign, transfer, or hypothecate its interest in the Leased Premises or this Agreement without the prior written consent of Lessor and any sale, assignment, transfer, or hypothecation by Lessee shall contain a provision to this effect. Any assignee of Lessee shall be bound by the terms and conditions of this Agreement.

24.5. Lessor's Assignment. Lessor may sell, assign, transfer, or hypothecate any of its rights hereunder without notice to Lessee.

## **25. ENCUMBRANCES.**

25.1. Lessee shall have no authority, express or implied, to create (or consent to the creation of) any lien, charge, or encumbrance upon the Leased Premises or mortgage, pledge, assign as collateral, voluntarily or otherwise, its interest in the Leased Premises or this Agreement and Lessee shall not permit the Leased Premises to be or become subject to any lien (including mechanic's liens), charge, or encumbrance whatsoever without the prior written consent of Lessor.

## **26. RELOCATION.**

- 26.1. Lessee understands Lessor has the right to replace the Leased Premises, in whole or in part, with equivalent premises similarly situated at the Airport. If the change is solely for the benefit of Lessor, Lessor agrees to pay all reasonable relocation costs and expenses associated with relocating Lessee.

## **27. BOOKS AND RECORDS.**

- 27.1. Lessee's Obligations. Lessee shall maintain complete books and records containing the accounting and other financial records of Lessee's Activities on the Leased Premises and at the Airport including rents, fees, and other charges paid by Lessee for the current year and previous five (5) years.

27.1.1. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect all amounts due and owing to Lessor.

27.1.2. In the event of an audit, Lessee shall provide the auditor access to and shall furnish the auditor with information, records, reports, or other documentation regarding financial transactions, conduct of Activities on the Leased Premises and at the Airport or any other information, records, reports, or other documentation that relates to the Activities being conducted by Lessee on the Leased Premises and at the Airport. Lessee shall also provide access for the auditor to inspect all Improvements, facilities, vehicles, equipment, and Aircraft used by Lessee on the Leased Premises and at the Airport.

- 27.2. Lessor's Rights. Lessor may, at all reasonable times, audit records to enable verification and/or confirmation of the amount of rents, fees, and other charges due and owing to Lessor.

27.2.1. If Lessor is not satisfied with the findings of any audit conducted by Lessor, Lessor shall serve notice to Lessee.

27.2.2. If Lessee agrees with Lessor's audit findings, Lessee shall, within thirty (30) calendar days after receipt of notice, make known Lessee's agreement with Lessor's findings in writing and pay one hundred twenty-five percent (125%) of all monies due and owing to Lessor. If Lessee does not agree with Lessor's findings, Lessee shall, within sixty (60) calendar days after receipt of notice from Lessor, furnish to Lessor, at Lessee's sole cost and expense, an audit made by an independent CPA mutually agreeable to both Parties.

27.2.3. All costs and expenses of Lessor's audit shall be paid by Lessee if the report of the independent CPA certifies Lessor's audit contained a finding prejudicial to Lessor's receipt of rents, fees, and/or other charges as described herein, in an amount equal to or greater than two percent (2%) of the amount of rents, fees, and other charges reported by Lessee.

27.2.4. The final audit of the independent CPA made under this Section shall be conclusive upon the Parties and Lessee shall pay to Lessor, within fourteen (14) calendar days after a copy of the independent CPA's final report has been delivered to Lessee, one hundred twenty-five (125%) of the amount, if any, identified as due and owing to Lessor. The failure of Lessee to make payment within fourteen (14) calendar days shall constitute a default under this Agreement and shall give cause to Lessor for immediate termination of this Agreement.

## **28. SURRENDER LEASED PREMISES.**

- 28.1. Upon expiration of the Original Term or Extension of Term, or earlier termination of this Agreement, Lessee shall promptly vacate, surrender, and deliver possession of the Leased Premises to Lessor. If Lessee fails to do so, Lessor may immediately commence eviction proceedings at its sole discretion.
- 28.2. Lessee shall return the Leased Premises to Lessor in as good condition as when Lessee took possession, ordinary and reasonable wear and tear excepted. Any deterioration or damage caused by incident, accident, abuse, carelessness, negligence, or misconduct shall not be considered ordinary and reasonable wear and tear. In the event that Lessee fails to return the Leased Premises to Lessor in good condition, Lessor may perform any work necessary to return the Leased Premises to good condition including maintenance, repair, restoration, replacement, and cleaning and deduct the cost of the work from the Security Deposit. If the Security Deposit is insufficient to cover the work performed, Lessee shall be obliged to pay the additional balance to Lessor.
- 28.3. Provided Lessee is not in default or breach of this Agreement, Lessee shall also remove all personal property from the Leased Premises upon expiration of the Original Term or Extension of Term or earlier termination of this Agreement. If Lessee fails to do so, Lessor may remove or caused to be removed, at Lessee's sole risk, cost, and expense and without any liability to Lessor, all personal property. Lessor may dispose of any personal property removed from the Leased Premises in accordance with the PMCDs, other directives of Lessor, and Legal Requirements and deduct the cost of doing so from the Security Deposit. If the Security Deposit is insufficient to cover the work performed, Lessee shall be obliged to pay the additional balance to Lessor.
- 28.4. The Security Deposit or the portion not applied pursuant to the terms and conditions of this Agreement shall be returned to the Lessee without interest no later than fourteen (14) calendar days after the expiration of the Original Term or Extension of Term provided the Lessee has vacated and surrendered possession of the Leased Premises to Lessor.
- 28.5. Surrender of Agreement or Leased Premises. The voluntary or other surrender of this Agreement or the Leased Premises by Lessee, mutual cancellation of this Agreement, or termination of this Agreement by Lessor shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or subtenancies, or may, at the option of Lessor, operate as an assignment of any and all such subleases or subtenancies.

## **29. REPRESENTATIONS AND WARRANTIES OF LESSEE.**

- 29.1. Lessee represents and warrants to Lessor that:
  - 29.1.1. Lessee is duly organized and validly existing under the laws of its jurisdiction, incorporation, or establishment;
  - 29.1.2. Lessee has the power and the authority to enter into and perform the terms and conditions of this Agreement and to pay the rents, fees, or other charges required under this Agreement;
  - 29.1.3. this Agreement has been duly authorized, executed, and delivered by Lessee and assuming the due authorization, execution, and delivery hereof by the Parties hereto, constitutes a legal, valid, and binding

obligation of it enforceable against it in accordance with the terms and conditions of this Agreement, subject to applicable bankruptcy, insolvency, and similar laws affecting creditor's rights generally, and subject, as to enforceability, to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law;

- 29.1.4. Lessee's execution and delivery of this Agreement and its performance of the terms and conditions of this Agreement do not and will not constitute or result in a default, breach, or violation of, or the creation of any lien or encumbrance on the Leased Premises under, its charter or bylaws (or equivalent organizational documents), or any other agreement, instrument, law, ordinance, regulation, judgment, injunction, or order applicable to Lessee or the Leased Premises;
- 29.1.5. all consents, authorizations, and approvals requisite for Lessee's execution, delivery, and performance of this Agreement have been obtained and remain in full force and effect and all conditions, obligations, privileges, and agreements thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority or Agency is required for such execution, delivery, or performance; and
- 29.1.6. there is no proceeding pending or threatened against Lessee at law or in equity, or before any governmental instrumentality or in any arbitration, which would materially impair Lessee's ability to perform the terms and conditions of this Agreement and there is no such proceeding pending against Lessee which purports or is likely to affect the legality, validity, or enforceability of this Agreement.

### **30. MISCELLANEOUS PROVISIONS.**

- 30.1. Independent Entities. Nothing in this Agreement is intended to nor shall it be construed, in any way, as creating or establishing a relationship of partners between the Parties or as constituting Lessee as a representative, officer, official, employee, agent, or volunteer of Lessor for any purpose or in any manner whatsoever.
- 30.2. Binding Effect. This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties. Whenever a reference is made to either Party, such reference shall be deemed to include, wherever applicable, a reference to the heirs, successors, and assigns of such Party, as if in every case so expressed.
- 30.3. Conflict of Interest. Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement. Lessee warrants and covenants that no official or employee of Lessor nor any business entity in which any official or employee of Lessor is interested: (a) has been employed or retained to solicit or aid in the procuring of this Agreement or (b) will be employed in the performance of this Agreement without the divulgence of such fact to Lessor. In the event that Lessor determines that the employment of any such official, employee, or business entity is not compatible with such official's or employee's duties as an official or employee of Lessor, Lessee upon request of Lessor shall immediately terminate such relationship or employment. Violation of this provision constitutes a serious breach of this Agreement and Lessor may terminate this Agreement as a result of such violation.

- 30.4. Memorandum of Agreement. Following execution of this Agreement, either Party, at its sole expense, shall be entitled to record a Memorandum of Agreement in the official records of Placer or Nevada County. Upon termination or expiration of this Agreement, Lessee shall execute and record a quitclaim deed as to Lessee's leasehold interest.
- 30.5. Estoppel Certificate. The Parties shall, from time to time, upon at least fifteen (15) calendar days prior written notice from a Party, execute, acknowledge, and deliver to the other Party a certificate certifying:
- 30.5.1. the Commencement Date and the Original Term or Extension of Term;
  - 30.5.2. the date to which the rents, fees, and other charges, if any, have been paid;
  - 30.5.3. certifying this Agreement is unmodified and in full force and effect or, if modified, stating the nature of the modification and certifying that the Agreement, as modified, is in full force and effect;
  - 30.5.4. acknowledging that there are not to Party's knowledge any actual or claimed defaults or breaches that have not been cured, except, if any, those actual or claimed defaults or breaches must be specified in the certificate, and Party must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute a default or breach under this Agreement; and
  - 30.5.5. other matters as may be reasonably requested.
- 30.6. Subordination. This Agreement is subject and subordinate to the provisions of any existing or future agreements between Lessor and the United States, the State, or any other entity pertaining to the planning, development, operation (including maintenance and repair), and management of the Airport. Should the DOT, FAA, or any successor department or agency issue an order determining that any provision herein is inconsistent with any covenant or restriction of the deeds under which the Lessor acquired the Airport, or the provisions of any existing or future agreement entered into between the Lessor and United States, the Parties shall amend this Agreement as necessary to resolve the inconsistency. If the Parties cannot agree on the manner in which to resolve the inconsistency, the Lessor shall have the unilateral right to amend the Agreement to resolve the inconsistency.
- 30.7. Dispute Resolution. Unless otherwise mutually agreed to, any controversies between Lessee and Lessor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its defaults or breaches shall be submitted to mediation within thirty (30) calendar days of the written request of one (1) Party after the service of that request on the other Party.
- 30.7.1. The Parties may agree on one (1) mediator. If they cannot agree on one (1) mediator, the Party demanding mediation shall request the Superior Court of Nevada County to appoint a mediator. The mediation meeting shall not exceed one (1) day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
  - 30.7.2. The costs of mediation shall be borne by the Parties equally.
  - 30.7.3. Mediation under this Section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Agreement, the prevailing party shall be entitled to recover their reasonable attorney's fees, expert witness costs, and cost of suit.

- 30.8. Governing Law and Venue. This Agreement shall be deemed to have been made in, and shall be construed in, accordance with the statutes and laws of the State without regard to conflicts of law principles.
- 30.8.1. The Superior Court of Nevada County (Court) shall have exclusive jurisdiction and venue with respect to all disputes, actions, and proceedings arising from or under this Agreement, regardless of the nature or basis of the dispute.
- 30.8.2. Lessee consents to the jurisdiction and venue of the Court and waives personal service of any and all process upon Lessee in all such actions or proceedings, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to Lessee at the address herein stated, and service so made shall be completed two (2) calendar days after the same shall have been posted.
- 30.8.3. If any action at law or in equity is brought about by either Party to enforce this Agreement or any part thereof, the prevailing Party shall be entitled to recover from the other Party as part of prevailing Party's costs reasonable attorney and court fees, costs, and expenses, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.
- 30.9. Holding Over. If Lessee, upon expiration of the Original Term or Extension of Term, remains in possession of the Leased Premises, such holding over shall be regarded as a month-to-month tenancy (not as a renewal or extension of this Agreement) which may be terminated at any time by Lessor or Lessee by providing not less than thirty (30) calendar days written notice. The rents, fees, and other charges that shall be paid during the holding over period shall be equal to one hundred fifty percent (150%) of the monthly rents, fees, and other charges that were being charged by Lessor at the time the Original Term or Extension of Term expired. The holdover period shall be subject to all of the terms and conditions of this Agreement. This provision shall not be construed as Lessor's permission for Lessee to hold over. Acceptance of rents, fees, and other charges shall not constitute a renewal or extension of this Agreement.
- 30.10. Compliance with Legal Requirements. The Parties hereto shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state and local governments (herein referred to as "Legal Requirements") in the performance of their rights, duties, and obligations under this Agreement.
- 30.11. Interpretations. In construing or interpreting this Agreement, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.
- 30.12. Captions. The captions of the various sections, paragraphs, and subparagraphs of this Agreement are inserted only as a matter of convenience or reference only, and are not intended to define, limit, or describe the scope of this Agreement or any provision contained herein.
- 30.13. Severability. If any provision in this Agreement is held to be illegal, invalid, or unenforceable in full or in part, for any reason, by any court of competent jurisdiction, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid, and enforceable. The illegality, invalidity, or unenforceability of any such provision shall in no way affect any other provisions

in this Agreement, provided that the illegality, invalidity, or unenforceability of any such provision does not materially prejudice either Party with regard to the respective rights and obligations of each Party contained in the valid terms and conditions of this Agreement.

- 30.14. Brokers. Each Party represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this Agreement in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.
- 30.15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 30.16. Amendments. The Parties acknowledge no oral agreements regarding this Agreement have been entered into by and between the Parties and that no modification, alteration, or variation of the terms and conditions of this Agreement shall be valid unless made in writing, agreed to, and signed by the Parties at the time of the modification, alteration, or variation.
- 30.17. Time of Essence. It is mutually agreed by the Parties that time is of the essence in the performance of the terms and conditions to be kept and performed under this Agreement. However, any prevention, delay, or stoppage due to strikes, walkouts, labor disputes, natural disasters, inability to obtain labor or materials or reasonable substance therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the Party obligated to perform, shall excuse the performance by such Party for a period equal to any such prevention, delay, or stoppage, except for the obligation imposed with regard to rental and other charges to be paid by Lessee pursuant to this Agreement.
- 30.18. Entire Agreement. This Agreement, including any exhibits attached hereto, contains and embodies the entire understanding and sole agreement between the Parties respecting the occupancy and use of the Leased Premises by the Lessee and supersedes and replaces any and all prior understandings and agreements, written or oral, expressed or implied, relating to this Agreement.
- 30.19. Notices. Except as otherwise expressly provided by Legal Requirement, whenever any notice or communication is required or permitted by this Agreement or by Legal Requirement to be made, served on, given, or transmitted to the Parties, such notice or communication shall be in writing and shall be hand delivered or sent by certified mail (postage prepaid), courier, or overnight carrier, and addressed to:

**Lessor:**

**With a Copy to:**

Truckee Tahoe Airport District	Entity Name
10356 Truckee Tahoe Airport Road	Address
Truckee, CA 96161	City, State and Zip

**Lessee:****With a Copy to:**

Entity Name DesignBar Group Inc	Entity Name
Address	Address
City, State and Zip	City, State and Zip

30.19.1. The date of service of notice shall be the date such notice is actually delivered to the intended Party or the date delivery is refused by the intended Party.

30.19.2. The Parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

30.20. Lessee's Obligations. If a California corporation, Limited Liability Company or Limited Liability Partnership, LESSEE shall furnish LESSOR a copy of its Articles of Incorporation or Article of Organization, as appropriate and a current listing of its officers and directors filed with the California Secretary of State. If an out-of-state corporation, Limited Liability Company or Limited Liability Partnership, LESSEE shall also furnish a copy of a current Certificate of Qualification issued by the California Secretary of State, qualifying the entity to do business in the State of California, as well as a certificate designating its agent for service of process in the State of California. If a partnership LESSEE shall furnish LESSOR a copy of the published statement of doing business under a fictitious name filed with the Nevada or Placer County Clerk. Regardless of LESSEE's status, each person executing this Agreement on behalf of LESSEE shall complete, as individuals, the LESSOR's Lessee/Licensee Information Form and return the same to the LESSOR. Further, Philip Fay personally guarantees all of the obligations of LESSEE under this Lease and Operating Agreement regardless of the status of LESSEE as an entity, until such time as all of LESSEE'S obligations have been discharged.

30.20. Lessee's Obligations. If a California corporation, Limited Liability Company or Limited Liability Partnership, LESSEE shall furnish LESSOR a copy of its Articles of Incorporation or Article of Organization, as appropriate and a current listing of its officers and directors filed with the California Secretary of State. If an out-of-state corporation, Limited Liability Company or Limited Liability Partnership, LESSEE shall also furnish a copy of a current Certificate of Qualification issued by the California Secretary of State, qualifying the entity to do business in the State of California, as well as a certificate designating its agent for service of process in the State of California. If a partnership LESSEE shall furnish LESSOR a copy of the published statement of doing business under a fictitious name filed with the Nevada or Placer County Clerk. Regardless of LESSEE's status, each person executing this Agreement on behalf of LESSEE shall complete, as individuals, the LESSOR's Lessee/Licensee Information Form and return the same to the LESSOR. Further, PHILIP FAY personally guarantees all of the obligations of LESSEE under this Lease and Operating Agreement regardless of the status of LESSEE as an entity, until such time as all of LESSEE'S obligations have been discharged.

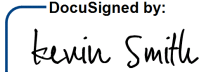
- 30.21. Signing Authority. All individuals executing this Agreement on behalf of Lessee represent that they are authorized to execute and deliver this Agreement on behalf of Lessee. Lessee shall, prior to the execution of this Agreement, deliver to Lessor evidence of that authority and evidence of due formation, all satisfactory to Lessor.
- 30.22. Exhibits. The following exhibits are attached hereto and made a part of this Agreement: Exhibit A.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth herein. This Agreement is effective as of the last date signed by either party.

TRUCKEE TAHOE AIRPORT DISTRICT:

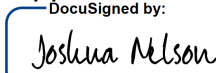
DocuSigned by:  
  
A4287FF85596B484  
Teresa O'Dette, Board President  
8/31/2020

ATTEST:

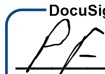
DocuSigned by:  
  
53C802CCA4BE411...  
Kevin Smith, General Manager

Dated: 8/31/2020

Approved as to form and legality by:

DocuSigned by:  
  
9A14B32C839046B  
Joshua Nelson, Esq.  
Truckee Tahoe Airport District Attorney  
8/31/2020

DESIGNBAR GROUP INC

DocuSigned by:  
  
D1C8F400B4E3495...  
PHILIP FAY

8/29/2020

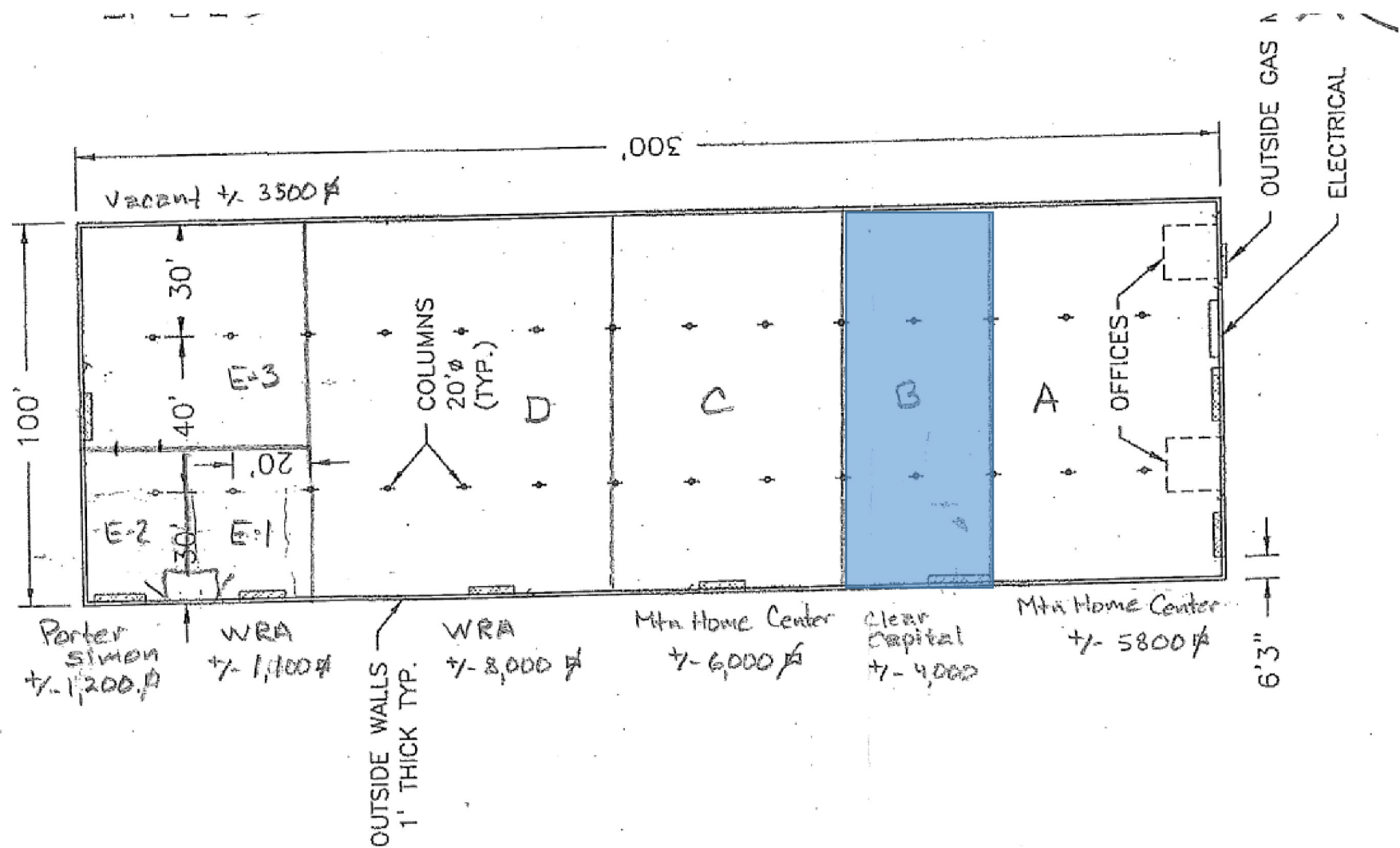
Dated

ATTEST:

[NAME], [TITLE]

Dated:

Exhibit A



## **Exhibit D**

### **ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION**

#### **SECTION A**

#### **Purpose and Definition of Terms**

##### **1. PURPOSE:**

The Truckee Tahoe Airport District, an airport owner subject to Federal Grant Agreement obligations at Truckee Tahoe Airport (TRK), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said DISTRICT and any and all entities who use or perform work or conduct activities on DISTRICT owned or operated airport premises for aeronautical or non-aeronautical purposes. The purpose of this Exhibit is to appropriately incorporate with the "Agreement", to which it is attached and made a part of by reference therein, the thirty-nine (39) numbered provisions contained within Section "B", "ASSURANCES", below.

##### **2. DEFINITION OF TERMS USED WITHIN SECTION "B", "ASSURANCES", BELOW:**

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section "A", this Exhibit is designed to be attached to and made a part of all Truckee Tahoe Airport District "Agreements", including, without limitation, leases, licenses, permits, contracts, etc. Therefore, in the event the "Agreement" to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than "DISTRICT" and "Lessee", then, where the terms "DISTRICT", "Lessee", and "Lease" appear, as shown, within the thirty-nine (39) numbered "ASSURANCES" listed within Section "B" below, said terms shall be deemed to mean "Truckee Tahoe Airport District", "THE OTHER PARTY TO THE PARTICULAR AGREEMENT" (e.g., Licensee, Permitted, Concessionaire, Operator, etc.), and the "AGREEMENT" itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively. Where the terms "LAND LEASED" and "LEASED PREMISES" (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the "Agreement" as being that/those to which leasehold tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, Permitted, Licensee, Operator, Concessionaire, etc., are expressly authorized.

#### **SECTION B**

#### **Assurances Airport Sponsors**

**A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

**B. Duration and Applicability.****1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

**2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

**3. Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

## C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

### 1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### **Federal Legislation**

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- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1 2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

### **Executive Orders**

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- a. Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 - Environmental Justice

### **Federal Regulations**

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- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4, 5, 6</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- m. 49 CFR Part 20 - New restrictions on lobbying.

- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.<sup>1 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

### **Specific Assurances**

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Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

### **Footnotes to Assurance C.1.**

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<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

<sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and

Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

<sup>5</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

<sup>6</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

## **2. Responsibility and Authority of the Sponsor.**

### **a. Public Agency Sponsor:**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

### **b. Private Sponsor:**

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

## **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

## **4. Good Title.**

a. It, a public agency or the Federal government, holds good title,

satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

## **5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-

use airport in accordance with these assurances for the duration of these assurances.

- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made

available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

#### **11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

#### **12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

#### **13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

#### **14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions

establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the

planning project a notice that the material was prepared under a grant provided by the United States.

- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

#### **19. Operation and Maintenance.**

The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
- 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

## **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

## **21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

## **22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- b. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- c. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- d. Each air carrier using such airport (whether as a tenant, non-tenant, or

subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

- e. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- f. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- g. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- h. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations,

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

#### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

#### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
  - 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition

on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

- 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

## **26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of

government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing
  - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;  
the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
  - 2) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

- 3) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non- discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
  - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
  - 3) Real Property. Where the sponsor receives a grant or other Federal

financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally- assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non- discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex,

age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States'

proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if
  - (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

### **32. Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

### **33. Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

### **34. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated\_\_\_\_\_ (the latest approved version as of this grant offer) and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

### **35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

### **36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

### **37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

### **38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
  - 1) Describes the requests;
  - 2) Provides an explanation as to why the requests could not be accommodated; and
  - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.