

LEASE AND CONCESSION AGREEMENT

This Lease and Concession Agreement (this "Agreement") entered into as of the _____ day of _____, by and between the Truckee Tahoe Airport District, a California Special Airport District ("DISTRICT") and _____ (hereinafter referred to as "LESSEE").

Witnesseth:

WHEREAS, DISTRICT owns, controls and operates the Truckee Tahoe Airport (the "Airport") and underlying airport office building ("Airport Office Building"), located in Placer and Nevada Counties, State of California; and

WHEREAS, Commercial enterprises are a valuable addition to the services of the airport, community and General Aviation; and

WHEREAS, DISTRICT desires to make such services available at the Airport and LESSEE is qualified, ready, willing and able to provide such services; and

WHEREAS, DISTRICT has facilities available excess to immediate aeronautical needs and suitable for such business; and

WHEREAS, DISTRICT and LESSEE have entered into two Leases, one on or about December 1, 2016 for five parking spaces for a five-year term and one on or about February 15, 2017, for an office building and ten additional parking spaces (and such Lease was subsequently amended on or about April 12, 2017) (collectively, "Prior Leases"), and

WHEREAS DISTRICT and LESSEE now agree to supersede those Prior Leases by execution of this Agreement, all as set forth below.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties hereby agree as follows:

ARTICLE ONE

TERM

The term of this Agreement shall be for a period of _____ years, commencing on _____, and continuing through _____ (the "Termination Date"), unless earlier terminated under the provisions of this Agreement. LESSEE is also provided _____ option to renew this Lease for _____ -year term. In order to exercise that option, LESSEE shall not be in default of any provision of this Lease and shall give written notice exercising this option to DISTRICT not more than 120 days and not less than 60 days prior to expiration of the initial lease term. This Agreement contains no other option to extend the term, however nothing herein shall preclude LESSEE and DISTRICT from mutually agreeing to negotiate for any additional term or from mutually agreeing to negotiate for rental of any other facility constructed at the Airport during the term of this Agreement. In the absence of such a negotiated extension of the term, any occupancy by LESSEE beyond the Termination Date shall be on a month-to-month holdover basis on the conditions set forth herein.

ARTICLE TWO

LEASED PREMISES

DISTRICT hereby leases to LESSEE, and LESSEE hereby leases from DISTRICT, the following premises, identified and shown on Exhibit A, attached hereto and made a part hereof, (the "Premises"), together with the right of ingress and egress for vehicles:

A. The Real Property as described below and depicted on Exhibit A, attached hereto and incorporated herein by reference.

SUITE __ (approximately ____ sf of office space OF THE BUILDING LOCATED AT ____ OF TRUCKEE AIRPORT RD. AND CHANDELLE WAY identified in EXHIBIT A and ____ PARKING STALLS to be assigned by DISTRICT and to be marked by LESSEE by appropriate signage as approved by DISTRICT.

The area described above is approximate only and any variance between it and the actual space shall not operate to increase or reduce the rent to be paid pursuant to this Agreement.

B. The following Personal Property belonging to the DISTRICT: NONE

C. Upon commencement of this Lease, the Prior Lease will be terminated and superseded by this Lease Agreement and the terms, conditions and provisions of this Agreement shall prevail.

ARTICLE THREE

RIGHTS AND OBLIGATIONS OF LESSEE

A. **Required Services.** LESSEE is hereby granted the nonexclusive and revocable license to engage in, and LESSEE agrees to engage in, the business of providing full and complete **Rental Car Concession** business services at the Airport under LESSEE's trade name. LESSEE agrees that, conditions and weather permitting, it will be open and available for business between the hours of **8:00 a.m. and 5:00 p.m.** Monday through Friday and 9:00 a.m. to noon on Saturday, and that at other times may provide an on call service for communication with the public on a continual basis.

B. **Authorized Services.** In addition to the services required to be provided by LESSEE pursuant to Paragraph A. above, LESSEE is authorized, but not required, to provide the following services and to engage in the following activities: NONE.

C. **Operating Standards.** In providing any of the required and/or authorized services or activities specified in this Agreement, LESSEE shall operate for the use and benefit of the public and shall meet or exceed the following standards:

1. LESSEE shall comply with the minimum operating standards or requirements, now or hereafter promulgated by DISTRICT, applicable to each of LESSEE's activities on the Airport.
2. LESSEE shall, furnish service on a fair, reasonable and nondiscriminatory basis to all

users of the Airport. LESSEE shall furnish good, prompt and efficient service adequate to meet all reasonable demands for its services at the Airport. LESSEE shall charge fair, reasonable, and nondiscriminatory prices for each unit of sale or service; provided, however, that LESSEE shall be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume or membership purchasers.

3. LESSEE shall select and appoint a full-time regional manager of its operations at the Airport. The manager shall be qualified and experienced, with no less than 5 years' experience operating similar LESSEE activities, and vested with full power and authority to act in the name of LESSEE with respect to the method, manner and conduct of the operation of the rental car services to be provided under this Agreement. Because District does not provide Customer Service for LESSEE, LESSEE shall also provide DISTRICT with a customer service number that shall be in service 24/7/365.

4. LESSEE shall provide, at its sole expense, a sufficient number of employees, FF&E and fleet of rental vehicles to provide effectively and efficiently, LESSEE's use and services required or authorized by this Agreement.

5. LESSEE shall control the conduct, demeanor and appearance of its employees, who shall be trained by LESSEE and shall possess such technical qualifications and hold such certificates required by any government authority in carrying out assigned duties. It shall be the responsibility of LESSEE to maintain close supervision over its employees to assure a high industry standard of service to customers of LESSEE.

7. LESSEE shall comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the business contemplated, including rules and regulations promulgated by DISTRICT, and LESSEE shall maintain in effect and post in a prominent place all necessary and/or required licenses or permits.

8. Subject to the provisions of Article 5, Section A, LESSEE shall, at its sole cost and expense, be responsible for the maintenance and repair of the Premises and shall keep and maintain the Premises in good condition, order and repair, and shall surrender the same upon expiration of this Agreement, in the condition in which they are required to be kept, reasonable wear and tear and damage by the elements not caused by LESSEE's negligence excepted.

9. It is expressly understood and agreed that, in providing required and authorized services pursuant to this Agreement, LESSEE shall have the right to choose, in its sole discretion, its vendors and suppliers, provided such vendors and suppliers meet customary industry standards.

10. No open or uninvited solicitation on the Airport of LESSEE's services, except by signs as hereinafter permitted, shall be done or permitted, and DISTRICT shall determine in its sole discretion whether or not the foregoing restriction has been violated and constitutes a breach of this Agreement.

11. LESSEE shall not store materials or supplies at the Airport outside of any buildings other than parking vehicles in their designated parking spaces.

12. LESSEE shall make no unlawful or offensive use of the Airport, not commit or suffer or permit waste, excessive noise, obnoxious odors, excessive dust or any other nuisance at the Airport.

13. LESSEE agrees to keep the Premises clear and free of all litter, garbage, debris and refuse, and to keep such premises and area in an orderly and sanitary condition at all times.

14. LESSEE shall successfully take prompt action (and obtain DISTRICT's approval in such action) to mitigate any and all impacts on DISTRICT and DISTRICT'S employees, guests, invitees and other Airport tenants from LESSEE'S activities, including but not limited to noise, vibration, odor, steam or other emissions.

ARTICLE FOUR

APPURtenant PRIVILEGES

Use of Airport Facilities. LESSEE shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be connected with or appurtenant to the Airport, including but not limited to, terminal facilities and parking areas designated by DISTRICT.

ARTICLE FIVE

MAINTENANCE, ALTERATIONS, LEASEHOLD IMPROVEMENTS, SIGNS AND TRADE FIXTURES

A. Maintenance and Repairs. LESSEE has had the opportunity to inspect the Premises and accepts the Premises, as well as the improvements thereon, "AS-IS WHERE-IS, WITH ALL FAULTS" in their present condition, without any representation or warranty, express or implied, by DISTRICT as to the condition, fitness, or suitability of the Premises for LESSEE's intended use or for any other purpose and acknowledges that the Premises and the improvements are in good, clean, safe and tenantable condition as of the date of the Lease. DISTRICT, at DISTRICT's cost and expense, shall maintain in good condition and repair the exterior roof, exterior walls, structural supports, foundations, HVAC, electrical and plumbing systems of the Premises, provided that DISTRICT shall not be liable for any damage to LESSEE or the property of LESSEE resulting from DISTRICT's failure to make any repairs required by this section unless written notice of the need for such repairs has been given to DISTRICT by LESSEE and DISTRICT has failed for a period of thirty (30) days after the receipt of such notice to make such repairs. Except as otherwise expressly provided herein, LESSEE shall, at LESSEE's own cost and expense, keep and maintain all portions of the Premises, as well as all improvements on said Premises, in good order and repair and in a safe and, clean condition as they were when received from DISTRICT, reasonable wear and tear excepted. Except as noted above, DISTRICT shall have no obligation to repair, maintain or restore the Premises necessitated by the acts or omissions of LESSEE, its employees, contractors, invitees, or agents or to maintain any security or policing against theft, vandalism, malicious mischief, riot, social disorders or other public offenses. DISTRICT shall not be liable for any injury, loss, or damage to LESSEE, its business, or its property arising out of any failure to make repairs, the necessity of making repairs, or delay in making repairs. LESSEE expressly waives any right to claim damages (including, without limitation, consequential or business interruption damages) arising from such matters, and LESSEE's sole remedy shall be to require DISTRICT to perform such repair obligations as expressly provided herein.

B. Alterations; Removal of Lessee-Installed Property. LESSEE shall make no alterations, decorations, additions or improvements in the Premises or otherwise at the Airport without DISTRICT's prior written consent. All alterations, additions or improvements made by

LESSEE at the Airport shall, unless DISTRICT elects otherwise, as hereinafter provided, be the property of LESSEE and shall be removed by LESSEE, at LESSEE's expense within thirty (30) days of the expiration or termination of this Agreement. LESSEE shall also restore DISTRICT's property to at least its former condition normal wear and tear excepted and repair any damage resulting from such removal. If DISTRICT elects (upon written notice to LESSEE of such election given prior to the expiration or termination of this Agreement) that all or a designated portion of the alterations, additions, or improvements made by LESSEE shall remain on the Premises at expiration or termination of this Agreement, then said alteration, additions or improvements shall become DISTRICT's property at no cost to DISTRICT. Machinery, equipment and trade fixtures installed by LESSEE in the Premises shall not be considered "alterations, additions or improvements" subject to the foregoing provisions and shall be removed from the Airport by LESSEE on or before expiration or termination of this Agreement, provided any damage to DISTRICT's property resulting from such removal shall be repaired or restored at LESSEE's expense. All alterations, additions and improvements made by LESSEE shall be done in a workmanlike manner, with good materials, and in full compliance with all applicable building codes, laws, ordinances, regulations and directions of public agencies having jurisdiction, and free and clear from any and all liens, claims and demands for work performed, materials furnished, or operations conducted on the Premises.

C. Signs. LESSEE shall be entitled to maintain signs advertising its services, provided, however, DISTRICT reserves the right to remove any sign now or hereafter erected by LESSEE and provided, further, that such signs maintained by LESSEE shall be at such locations as DISTRICT's General Manager shall designate in advance in writing and shall be of such type, design, color, size, composition and material acceptable to and approved by the DISTRICT in its sole discretion. All of LESSEE's signs shall be maintained in good order, condition and appearance during the term of this Agreement and shall be removed from the Airport by LESSEE at LESSEE's sole expense on or before the expiration or other termination of this Agreement. LESSEE shall restore the premises to its pre sign installation condition when it removes the signs.

D. Trade Fixtures. During the term of this Agreement, LESSEE shall have the right, at its expense, to place in or on the Premises trade fixtures, furnishings, personal property, equipment and materials necessary to perform any services required or authorized hereunder. Said trade fixtures, furnishings, personal property, equipment and materials shall remain the property of LESSEE.

E. CASp Inspection. DISTRICT discloses that the Premises has not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject 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 subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. 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 premises." Pursuant to the foregoing Section 1938(e), LESSEE acknowledges and agrees that, if LESSEE wishes to have the Premises inspected by a CASp: (i) LESSEE must notify DISTRICT on or before the date when LESSEE executes this Agreement pursuant to the election below; (ii) the inspection will be at LESSEE's sole cost and expense; (iii) the inspection must be scheduled through District and in coordination with the DISTRICT's representative; (iv) any repairs or modifications necessary to

correct any violation of construction-related accessibility standards that is noted in the CASp report shall be LESSEE's responsibility; and (v) LESSEE must provide a copy of the CASp report to DISTRICT on completion. By initialing below, LESSEE represents that:

LESSEE wishes to have a CASp inspection of the Premises Initials: _____
LESSEE hereby waives its right to have a CASp inspection of the Premises Initials: _____

ARTICLE SIX

PAYMENTS

A. Rent and Fees. In consideration of the rights and privileges granted by this Agreement, LESSEE agrees to pay to DISTRICT during the term of this Agreement rent , Minimum Monthly Rent of \$ per square foot, for a total Minimum Monthly Rent of \$ per month (which is computed based on \$ per square foot initial monthly base rent (the "Base Rent"); \$ per square foot in CAMs; \$ in janitorial services; and \$ per square foot in utilities) adjusted as set forth below thereafter, together such other payments as are set forth in this Agreement, subject to further adjustment as set forth in Section D herein and other provisions of this Agreement.

(1) Vehicle Storage and Parking. Based on annual average use, LESSEE shall also pay \$ per month for each of vehicle parking stalls, for a total of \$ per month. These parking stalls shall be marked and are for Lessee's exclusive use and the areas are identified in Exhibit A. The rate may be adjusted from time to time by action of the DISTRICT'S Board of Directors with changes going into effect no less than 30 days after the decision and written notice to Lessee.

(2) Concession Fee.

(a) LESSEE shall also pay to District a Minimum Annual Guaranteed concession fee which shall be equal to **ten percent (10%)** of Lessee's/Concessionaire's gross receipts for rental cars picked up at the airport during the month for which such fee shall be due, or the sum of \$ per month, whichever is greater. For the purposes of this section, "gross receipts" shall include all receipts generated from customers at the Airport, including those that are picked up by concessionaire or concessionaire's agents at the Airport, whether by cash or credit. "Customers at the Airport" shall include those that arrive by aircraft, or otherwise secure the services of Concessionaire at the Truckee Tahoe Airport. "Gross receipts" shall include motor vehicle rental charges net of any discounts, coupons or credits at the time the rental contract is closed, time charges and/or mileage fees, fees paid for acceptance of personal accident, collision damage waiver, or other types of insurance; fees generated from contracted service with other Airport tenants and users, or other third parties at the Airport and other rental fees including but not limited to, rental of infant car seats or other equipment. "Gross receipts" shall not include the amount of any federal, state or local sales tax; sale of uniforms or clothing when such uniforms or clothing are required to be worn by Tenant's employees or agents; resale of petroleum products, including fuel and oil, provided that such resale fees are stated as part of Concessionaires standard agreement with its customers; or revenue generated from insurance, government and corporate rentals with special discounted rates, so long as such discounts are based on pre-arranged or negotiated corporate contracts, and any

applied employee discounts and promotional discounts, and any amounts received as payment and administration of red light tickets, parking tickets, other governmental fines and fees, tolls, towing and impounded vehicles.

(b) Lessee shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether cash or credit, in a cash register or registers having tape that accumulates and consecutively numbers all purchases. Lessee may comply with this provision by maintaining a manual log in lieu of a tape from registers. Lessee shall keep:

(i) full and accurate books of account and records in accordance with generally accepted accounting principles consistently applied, including, without limitation, a sales journal, general ledger, and all bank account statements showing deposits of Gross Sales revenue;

(ii) all cash register receipts or a manual log with regard to the Gross Sales, credits, refunds, and other pertinent transactions made from or on the Premises (including the Gross Sales of any subtenant, licensee, or concessionaire); and

(iii) detailed original records of any exclusions or deductions from Gross Sales (including any exclusions or deductions from Gross Sales of any subtenant, licensee, or concessionaire). These books, receipts, and records shall be kept for a period of two (2) years after the close of each Lease Year, and shall be available for inspection and audit by District and District's representatives at the Premises at all times during regular business hours. In addition, on request of District or District's representatives, Lessee agrees to furnish copies of Lessee's state and local sales and use tax returns, if required to be filed in the state where the Premises are located. Such books and records are only those directly related to an audit of Gross Receipts and excludes tax returns and audit work papers. If such records are kept at LESSEE'S headquarters, they shall be made available to DISTRICT upon request within seven business days.

(c) Within twenty (20) days after the end of each calendar month, commencing with the twentieth (20th) day of the month following the calendar month in which District's obligation to pay the Concession Fee commences and ending with the twentieth (20th) day of the month following the last month of the Term, Lessee shall furnish District with a statement, to be certified as correct by Lessee or the employee of Lessee authorized so to certify, that sets forth Lessee's Gross Sales per this Article Six for the month just concluded ("Monthly Sales Statement"), including any authorized exclusions and deductions. With each Monthly Sales Statement, Lessee shall pay to District as a Percentage Fee an amount equal to the percentage factors set forth in Section A. (2) of this Article Six. Once with respect to each Lease Year and within two (2) years after its end, whether during or after the Term, District may cause an audit of Lessee's business by an independent accountant of District's own selection, and if any monthly report made by Lessee to District is found to be more than 2% less than the amount of Lessee's actual Gross Sales for the period covered by this statement, Lessee shall immediately pay to District the cost of the audit and any additional Percentage Fee shown to be payable by Lessee, together with interest from the original due date at rate of 10% per annum; otherwise, the cost of this audit shall be paid by District. If Lessee fails to provide to District any Monthly Sales Statement at the time and in the manner specified in this Lease, this failure shall constitute a default under this Lease and District shall have the right, in addition to any other rights or remedies it may have under this Lease, to conduct an audit to determine these sales, and Lessee shall immediately reimburse District for the cost of the audit on written demand by District. If any Monthly Sales Statement is found to be more than 2% less than the amount of Lessee's Gross Sales shown by this audit, the

understatement shall be deemed willful and District may terminate this Lease upon written notice given at any time within thirty (30) days after receipt of the audit by District.

(d) The acceptance by District of any monies paid to District by Lessee as a Concession Fee for the Premises as shown by any Statement furnished by Lessee shall not be an admission of the accuracy of the statement or of any of the monthly statements furnished by Lessee during the Lease term, or of the sufficiency of the amount of the Concession Fee payments, but District shall be entitled at any time within two (2) years from the end of the Lease Year for which any of the Concession Fee payments have been paid to question the sufficiency of the amount paid and the accuracy of the statements furnished by Lessee to justify the amount Lessee shall, for each period of two (2) years, including the two (2) years following the end of the Term, keep safe and intact all of the records, books, and accounts required, and shall upon request make these records available to District, District's auditor, representative, or agent for examination at any reasonable time during this period.

B. Time of Payment and Late Charge. LESSEE shall pay DISTRICT at its Airport offices without reduction, abatement, deduction, offset or any prior demand therefor, in advance on the first day of each calendar month, commencing on the first day of the month following the execution of this Agreement, all monthly payments provided for in the Agreement. LESSEE shall pay the rent for the first month of this Agreement, prorated to the day of the month when the Agreement is executed, upon execution of the Agreement. All sums payable to DISTRICT shall be paid at the DISTRICT's principal place of business or at 10356 Truckee Airport Road, Truckee, California 96161. If LESSEE shall fail to pay any amounts due pursuant to the terms of this Agreement, by the twentieth (20th) day of the month such is installment is due, a late charge equal to ten percent (10%) of said monthly installment shall be added to that installment and shall be due and payable from LESSEE to DISTRICT. In addition, such unpaid amounts shall thereafter be subject to a service charge equal to seven percent (7%) per annum, calculated for each day the outstanding balance is not paid in full.

D. Annual Adjustment of Rental Fee. The Minimum Monthly Rent set forth in Section A herein shall be adjusted annually as follows: On _____ each year, commencing with _____, and also continuing annually if this Lease is extended or renewed, the monthly rent shall be computed by adding to the then current monthly rent an amount obtained by multiplying the then current monthly rent by the percentage by which the level of the Bureau of Labor Statistics, Consumer Price Index, West Region – Size Class A (cities over 2,500,000 population) All Items increases, using the most recently published data available as of such adjustment date. The

amount thus derived shall be the monthly rent for _____ and each succeeding month during the next one (1) year term and shall be adjusted accordingly for each succeeding annual period, provided that the monthly rent shall in no event be less than the rent imposed in the previous month. In the event that the defined Index is not available, the consumer price adjustment shall be computed as soon as such Index is available, and the rent shall be retroactively adjusted and LESSEE shall pay the new amount plus arrearages. In the event no Index is published for said adjustment year, the Index used shall be that for the next succeeding month which is published and an adjustment shall be made based thereon annually. Said resulting rent shall be rounded to the nearest dollar.

E. Taxes. LESSEE shall pay before delinquency any and all taxes (including real property taxes), assessments, fees or charges, including possessory interest taxes, which may be imposed, levied or assessed upon any leasehold or possessory interests of LESSEE, and personal property, improvements, equipment or fixtures owned, controlled or installed by LESSEE and used or located on the Airport, or upon LESSEE's business. By entering into this Agreement, a possessory interest subject to property taxation may be created. LESSEE shall pay all such taxes prior to delinquency, all property taxes, assessments, fees, and charges levied or assessed upon (i) such possessory interest; (ii) LESSEE's leasehold estate; and (iii) any improvements, fixtures, equipment, or personal property of LESSEE located on or about the Premises. Nothing herein shall be deemed to limit any of LESSEE's rights to appeal any levies or assessments in accordance with the rules, regulations, laws, statutes, or ordinances governing the appeal process of the taxing authority making such levies or assessments.

F. Operating Expenses.

a. General. In addition to the Rent and any other charges due under this Agreement, LESSEE shall pay to DISTRICT, as additional Rent, LESSEE's Pro Rata Share (as defined below) of all costs and expenses incurred by DISTRICT in connection with the ownership, operation, repair, restoration, replacement, maintenance, and management of the Airport Office Building and its improvements, including, without limitation, the buildings, roofs, common areas, parking lots, sidewalks, driveways, landscaping, and other areas of the Airport serving the Airport Office Building and used in common by tenants or occupants (collectively, the "Operating Expenses"). Operating Expenses shall include, without limitation:

- i. Costs of maintaining, repairing, restoring, and managing the common areas and facilities;
- ii. Costs of utilities and services not separately metered, including water, sewer, refuse disposal, heating, air conditioning, lighting, and security;
- iii. Costs of insurance premiums (property and liability) and deductibles;
- iv. Costs of compliance with laws, permits, licenses, and inspections;
- v. Costs of supervision, administration, management, labor, supplies, equipment, and service contracts;
- vi. Costs of maintenance and repair of parking areas, including cleaning, resurfacing, restriping, and non-capital improvements;
- vii. Costs of landscaping, roof maintenance (excluding capital replacement), gardening, and painting or decorating of non-tenant areas;
- viii. Real property taxes, general and special assessments, rent taxes, gross receipts taxes (to the extent not excluded by law), and any governmental surcharges or fees related to use or occupancy;

- ix. Capital expenditures required by law or that directly reduce and measurably lower Operating Expenses;
- x. Costs of collection, hauling, and disposal of refuse, including maintenance and repair of any garbage area/dumpsters provided by DISTRICT for use by all tenants of the Airport Office Building;
- xi. Costs of plowing, sanding, de-icing, and otherwise clearing snow and ice from the parking areas, drive aisles, sidewalks, and other common areas of the Airport Office Building; and
- xii. Other items customarily included as common area maintenance for similar commercial buildings, as reasonably determined by DISTRICT.

b. Pro Rata Share. LESSEE's Pro Rata Share of Operating Expenses shall be based on the ratio that the square footage of the Premises (_____ sq. ft.) bears to the total leasable square footage of the Airport Office Building, currently estimated at _____ sq. ft. ("Pro Rata Share"). Notwithstanding the previous sentence, LESSEE's share of snow removal and landscaping costs shall be twenty-one percent (21%) of such Operating Expenses, it being the intent of the parties that snow removal and landscaping be allocated among each rental car lessee on an equal 21% basis rather than on the basis of square footage, in order to more accurately reflect the pavement and landscaping areas benefiting each tenant. Furthermore LESSEE's share of Water & Sewer costs shall be fifteen percent (15%) of such Operating Expenses.

c. Payment of CAM. DISTRICT shall estimate the annual CAM charges for each calendar year and bill LESSEE in equal monthly installments together with Rent. Within one hundred twenty (120) days after the end of each calendar year, DISTRICT shall provide LESSEE with a reconciliation statement of actual CAM costs, and any overpayment or underpayment shall be reconciled by credit or additional payment, as applicable, within thirty (30) days of delivery of such statement.

ARTICLE SEVEN

UTILITIES, TRASH, AND SNOW REMOVAL

A. Utilities. LESSEE agrees to pay the cost of telephone and internet services, and shall place said utilities in its own name when possible. LESSEE shall pay its pro-rata share of such utilities which remain in the name of the DISTRICT. In the event LESSEE fails to pay any utility bill when due, DISTRICT may, at its option, pay the same and collect from LESSEE the amounts so disbursed, plus interest at the rate of set forth in Article 6.B herein. LESSEE hereby expressly waives any and all claims for damage against DISTRICT arising from failure or interruption of utility services, including but not limited to, electricity, gas, water, plumbing, sewage, heat, ventilation, or air conditioning, or from construction activities at the Airport.

B. Garbage. LESSEE shall dispose of all refuse in the garbage area/dumpsters provided by Lessor for the shared use of all tenants. LESSEE shall not place trash outside the garbage area and shall comply with all applicable waste and recycling laws. DISTRICT may adopt reasonable rules for use of the garbage area, and disposal costs shall be shared among tenants as determined by DISTRICT.

C. Snow Removal. DISTRICT shall provide snow removal for the outside areas contained within the Premises. Such snow removal shall be provided on an as-available basis subject to the DISTRICT priority schedule and availability of staff and equipment. LESSEE understands and

agrees that DISTRICT snow removal equipment (snowplows, snowblowers, shovels, etc.) is not available for its use. LESSEE hereby expressly waives any and all claims for damage against DISTRICT arising from failure or interruption of snow removal services.

ARTICLE EIGHT

HAZARDOUS SUBSTANCES

Hazardous Substances. The provision of this Section which govern LESSEE's obligations with regard to hazardous substances, as defined below, shall survive termination of this Agreement.

A. Definition of Hazardous Substance. For purposes of this Agreement, "Hazardous Substances" is defined to mean any substance, material or waste, including asbestos and petroleum (including crude oil or any fraction thereof), which is or becomes designated, classified or regulated as being "toxic", "hazardous", a "pollutant", or similar designation under any federal, state or local law, regulation or ordinance.

B. Indemnity Regarding Hazardous Substances. LESSEE agrees to indemnify and hold DISTRICT harmless from and against all liabilities, claims, actions, foreseeable and unforeseeable consequential damages, costs and expenses (including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of LESSEE's counsel) or loss directly or indirectly arising out of or resulting from the presence of any Hazardous Substances as a result of LESSEE's and its officers, agents, employees, guests, customers, visitors or invitees, or any sub-LESSEE's activities, in or around any part of the Airport or the soil, groundwater or soil vapor on or under the property, including those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, or any resulting damages or injuries to the person or property of any of their parties or to any natural resources. Upon demand by DISTRICT, LESSEE shall defend any investigation, action or proceeding alleging the presence of any Hazardous Substances in any such location, which affects the Premises or which is brought or commenced against DISTRICT, whether alone or together with LESSEE or any other person, all at LESSEE's own cost and by counsel to be approved by DISTRICT in the exercise of its reasonable judgment. In the alternative, DISTRICT may elect to conduct its own defense at the expense of LESSEE. This indemnity shall survive the expiration or earlier termination of this Agreement.

C. Compliance Regarding Hazardous Substances. LESSEE shall comply and cause all occupants of the Premises to comply, with all laws, regulations, and ordinances governing or applicable to Hazardous Substances as well as the recommendations of any qualified environmental engineer or other expert which apply or pertain to the Premises. LESSEE acknowledges that Hazardous Substances may permanently and materially impair the value and use of the Premises.

LESSEE'S reasonable use of the DISTRICT Oil Bowser for disposal is included within the rent herein. For all other storage or disposal, LESSEE shall obtain and maintain a "Hazardous Waste Generator's Permit" and a "Hazardous Waste Storage Permit". LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the Premises without the prior written consent of the DISTRICT.

LESSEE shall not allow the installation or release of hazardous substances in, on, under or from the 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 substance.

D. Notice Regarding Hazardous Substances. LESSEE shall promptly notify DISTRICT if it knows, suspects or believes, there may be any Hazardous Substances in or around the Premises, or in the soil, groundwater or soil vapor on or under the property, or that LESSEE or the Premises may be subject to any threatened or pending investigation by any governmental agency under any law, regulation or ordinance pertaining to any Hazardous Substances.

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

E. Site Visits, Observations, and Testing. DISTRICT and its agents and representatives shall have the right at any reasonable time to enter and visit the Premises for the purposes of observing the Premises, taking and removing solid or groundwater samples, and conducting tests on any part of the Premises. Such entry shall be during normal business hours except for emergencies. DISTRICT is under no duty, however, to visit or observe the Premises or to conduct tests. No site visit, observation or testing by DISTRICT shall result in a waiver of any default of LESSEE or impose any liability on DISTRICT. In no event shall any site visit, observation or testing by DISTRICT be a representation that Hazardous Substances are or are not present in, on or under the Premises, or that there has been compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither LESSEE nor any other party is entitled to rely on any site visit, observation or testing by DISTRICT. DISTRICT 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 DISTRICT. In each instance, DISTRICT shall give LESSEE reasonable notice before entering the Premises or any other place DISTRICT is permitted to enter under this Section. DISTRICT shall make reasonable efforts to avoid interfering with LESSEE's use of the Premises or any other property in exercising any right provided in this Section. In no event shall DISTRICT be responsible or liable for any injury, loss, or damage to LESSEE, its property, or its business arising out of, relating to, or resulting from such activities.

ARTICLE NINE

INSURANCE

A. Required Insurance. LESSEE shall obtain and maintain continuously in effect at all times during the term of this Agreement, at LESSEE's sole expense, the following insurance:

1. **Comprehensive general liability insurance** protecting DISTRICT against any and all liability arising by reason of LESSEE's conduct incident to the use of the Premises, or resulting from any accident occurring on or about the roads, driveways or other public places, including runways and taxiways, used by LESSEE at the Airport, caused by or arising out of any wrongful act or omission of LESSEE, in the minimum amount of \$3,000,000 per occurrence;

2. Personal injury in the amount of \$1,000,000 per person/\$3,000,000 aggregate;

4. Property Damage in the amount of \$500,000;
5. Designated Contractual Liability in an amount of in an amount of \$1,000,000 for each occurrence/\$1,000,000 aggregate;
6. Premises medical payments insurance in an amount of \$1,000 any one person \$5,000 aggregate.

The insurance specified in Sub-Paragraphs A.2 through A.6, above, shall name DISTRICT as an additional insured and shall reference this Agreement.

Any policy of insurance required under this Article shall be written by insurance companies authorized to do business in California. Each policy of insurance procured by LESSEE pursuant to this Article shall expressly provide that it cannot be canceled for any reason or altered in any manner unless at least 30 days' prior written notice has been given by the insurance company issuing the policy to DISTRICT in the manner specified in this lease for service of notices on DISTRICT by LESSEE.

Promptly on the issuance, reinsurance, or renewal of any insurance policy required by this Agreement, including fire and liability insurance policies, but at least upon execution of this lease and annually thereafter, LESSEE shall cause a Declaration confirming the policy or policies to be given to DISTRICT. Upon request by DISTRICT, LESSEE shall provide a Declaration sheet confirming the existence of such policy or policies as required by this Agreement being in effect.

If at any time LESSEE fails to procure or maintain the insurance required by this Article, DISTRICT may obtain that insurance and pay the premiums on it for the benefit of DISTRICT. Any amounts paid by DISTRICT to procure or maintain insurance pursuant to this section shall be immediately due and repayable to DISTRICT by LESSEE with the next then due installment of rent under this lease; failure to repay at that time any amount expended by DISTRICT shall be considered the same as a failure to pay rent and a default by LESSEE under this Agreement.

B. LESSEE shall not do or permit to be done any act or thing that will invalidate or conflict with any insurance policies issued to DISTRICT or LESSEE. In the event any act, activity, use or thing on the Premises by LESSEE results in any increase in DISTRICT'S insurance rates, LESSEE shall be responsible and pay for that increase in DISTRICT'S insurance premiums as additional rent.

ARTICLE TEN

INDEMNIFICATION

A. LESSEE shall defend (with counsel acceptable to DISTRICT), protect, indemnify and hold harmless DISTRICT, its directors, officers, employees, agents and representatives at all times from and against any and all liabilities, suits, proceedings, liens, actions, penalties, losses, expenses, claims or demands of any nature, including costs and expenses for legal services and causes of action of whatever character (including, without limitation, diminution in value or use of the Airport, attorneys' fees, consultant fees and expert fees) which DISTRICT may incur, sustain or be subjected to arising out of or in any way connected with this Agreement, the acts or omissions of LESSEE or its officers, agents, employees, guests, customers, visitors or invitees, or LESSEE's operations on, or use or occupancy of the Premises or the Airport or Airport facilities. Upon notice from DISTRICT, LESSEE shall defend DISTRICT, at LESSEE's expense by counsel

satisfactory to DISTRICT, for any and all claims covered under this Article Ten.

LESSEE, its employees, agents, and contractors, agree to waive, remise, and release, and fully and forever discharge DISTRICT and its affiliates, to the fullest extent permitted by law, from any and all claims (including injury, damages, liabilities, expenses, and/or causes of action) arising out of, attributable, or relating in any manner, to LESSEE'S use or occupancy of the Premises. This indemnification shall survive the expiration or earlier termination of this Agreement.

The foregoing indemnification excludes only liability or loss caused by the sole gross negligence or willful misconduct of DISTRICT.

B. Notice. LESSEE agrees to notify DISTRICT in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which LESSEE has knowledge, and to cooperate with DISTRICT in the investigation and defense thereof.

ARTICLE ELEVEN

CASUALTY

A. Damage or Destruction of District-erected Premises. In the event that any fixed improvements erected on the Premises by DISTRICT are damaged or destroyed by fire or other casualty, the rent hereunder shall not abate provided the Premises are not rendered untenantable by such damage. If the Premises are rendered untenantable, and DISTRICT elects to repair the Premises, the rent shall abate for the period during which such repairs are being made, provided the damage was not caused by acts or omissions of LESSEE, its employees, agents or invitees, in which case the rent shall not abate. If the Premises are rendered untenantable and DISTRICT elects not to repair the Premises this Agreement shall terminate.

B. Damage or Destruction of Lessee-erected Premises. In the event of damage to or destruction by fire, the elements, acts of God, or any other cause, of LESSEE-constructed improvements located within the Premises or in the event LESSEE-constructed improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, LESSEE shall, within ninety (90) days of such damage, destruction or declaration commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Premises for the purposes required by this Agreement. Repair, replacement or reconstruction of improvements within the Premises shall be accomplished in a manner and according to plans approved by DISTRICT.

ARTICLE TWELVE

CONDEMNATION

If all or any part of the Premises is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this Agreement:

(1) Either DISTRICT or LESSEE may terminate this Agreement by giving the other thirty (30) days' written notice of termination; provided, however, that LESSEE cannot terminate this Agreement unless the portion of the Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the uses permitted by this Agreement.

(2) If only a portion of the Premises is taken by eminent domain and neither DISTRICT nor LESSEE terminates this Agreement, the rent thereafter payable under this Agreement shall be reduced by the same percentage that the floor area of the portion taken by eminent domain bears to the floor area of the entire Premises.

(3) If any portion of the Airport other than the Premises is taken by eminent domain, DISTRICT may, at its option, terminate this Agreement by written notice to LESSEE.

(4) Any and all damages and compensation awarded or paid because of a taking of the Premises shall belong to DISTRICT, and LESSEE shall have no claim against DISTRICT or the entity exercising eminent domain power for the value of the unexpired term of this Agreement or any other right arising from this Agreement.

ARTICLE THIRTEEN

LESSEE AS INDEPENDENT CONTRACTOR

In conducting its business hereunder, LESSEE acts as an independent contractor and not as an agent, partner or joint venturer of DISTRICT. The selection, retention, assignment, direction and payment of LESSEE's employees shall be the sole responsibility of LESSEE, and DISTRICT shall not attempt to exercise any control over the daily performance of duties by LESSEE's employees.

ARTICLE FOURTEEN

NONEXCLUSIVE RIGHTS

A. Nonexclusive Right. It is not the intent of this Agreement to grant to LESSEE the exclusive right to provide any or all of the services described in this Agreement at any time during the term of this Agreement. DISTRICT reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to LESSEE. DISTRICT does, however, covenant and agree that:

1. It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport;
2. Any other operator of aeronautical endeavors or activities will not be permitted to operate on the Airport under rates, terms, or conditions which are more favorable than those set forth in this Agreement; and
3. It will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease and operating agreement.

B. Nonexclusive Concession. The concession or rights herein granted to LESSEE to operate a the permitted business from the Premises are nonexclusive, and DISTRICT shall have the right to deal with, offer and grant similar leases, rights and concessions to any other firm or person. No such additional agreement (including "car sharing vehicles") shall be on terms more favorable than those provided in this Lease, other than rent. In the event of a conflict between the concessions of LESSEE and any other LESSEE or concessionaire at the Airport, DISTRICT shall have the right to resolve such conflict or dispute and its determination shall be binding upon LESSEE.

ARTICLE FIFTEEN

ASSIGNMENT AND SUBLetting

LESSEE shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber, or dispose of this Agreement or any estate or right created by this Agreement, or any interest in any portion of the same, or permit any other person or persons, company or corporation to occupy the Premises. This lease is non-transferable. Any attempt to transfer this Agreement from LESSEE by merger, consolidation, or liquidation, or the sale, conveyance, transfer by bequest or inheritance, or other transfer of a controlling interest in LESSEE shall constitute a default and termination of the agreement. LESSEE shall have the right to assign its interest in the Lease to any entity wholly owned or controlled by LESSEE or its parent corporation, or to a successor by merger or consolidation, or to any entity that acquires all or substantially all of LESSEE'S assets or stock.

ARTICLE SIXTEEN

PERMITS AND REGULATIONS

A. Permits. LESSEE shall be solely responsible for, obtain and pay for any and all permits required by all federal, state, and local governmental entities for any and all work on alterations, additions modifications, installations, or improvements accomplished by LESSEE or by others on behalf of or for the benefit of LESSEE, or caused or allowed to be accomplished by LESSEE on the Premises. Any consent of DISTRICT Manager required under this Agreement shall be separate from any other consents or approvals required by any federal, state or other governmental agency.

B. Compliance with Governmental Requirements. LESSEE shall, at LESSEE's sole cost and expense, comply with all rules, regulations, ordinances, statutes and laws of all county, municipal, state, local, federal and other governmental authorities, now or hereafter in effect pertaining to the Airport, the Premises, or LESSEE's use thereof. LESSEE shall specifically ensure that all of LESSEE'S employees have proper Worker's Compensation coverage in effect at all times.

C. Compliance with District Rules and Regulations. LESSEE shall at LESSEE's sole cost and expense at all times during the term of this Agreement or any renewal or extension thereof comply with and observe all rules, regulations, ordinances and laws which have been or may be promulgated by DISTRICT relating to the Premises and the use of the facilities of the Airport including all fire regulations, safety regulations, noise control regulations and security regulations. Such rules and regulations are hereby made a part of this Agreement and LESSEE's failure to keep and observe the rules and regulations shall constitute a breach of the terms of this Agreement in like manner as if the same were contained herein as covenants and conditions. DISTRICT reserves the right to amend or supplement the rules and regulations and to adopt additional rules and regulations applicable to the Premises, to LESSEE's use of the Premises, and the use of the facilities of the Airport. DISTRICT shall have no obligation to LESSEE as a result of the violation of any such rules by any other person.

ARTICLE SEVENTEEN

ASSURANCES REQUIRED BY THE FAA

Those certain thirty-nine (39) provisions set forth within Section B, "Assurances," of Exhibit B, "Assurances Required by the Federal Aviation Administration," attached hereto and made a part

hereof, are those specific provisions required by the FAA to be appropriately included within all agreements (including, without limitation, leases, licenses, permits, and contracts) between DISTRICT and any and all persons and/or entities who use or perform work or conduct activities on DISTRICT-owned Airport premises for aeronautical or non-aeronautical purposes. LESSEE, by its signature(s) hereunto affixed, acknowledges that it has reviewed the aforesaid Exhibit B, in its entirety, and fully understands the meaning, purpose, and intent thereof. LESSEE expressly agrees that, throughout the term of the Agreement hereof, it shall fully and faithfully comply with, abide by and/or adhere to, as applicable and appropriate, each and every one of the numbered provisions contained with Section B, "Assurances," of said Exhibit B (as said numbered provisions are reflected therein or as same may be amended, from time to time, during the life hereof, by DISTRICT, as and when the FAA's requirements thereon imposed may so dictate), which, pursuant to the guidelines established within Sections 2 of Section A of said Exhibit B, shall either be applicable to LESSEE on the start date of the term hereof or which, as a result of changing facts and/or circumstances, shall subsequently become applicable to LESSEE, hereunder, during the life hereof.

ARTICLE EIGHTEEN

DEFAULT AND TERMINATION

A. Termination by LESSEE. This Agreement shall be subject to termination by LESSEE in the event of any one or more of the following events:

1. The abandonment of the Airport as an airport or airfield for any type, class or category of aircraft.
2. The default by DISTRICT in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of DISTRICT to remedy, or undertake to remedy, to LESSEE's satisfaction, such default for a period of thirty (30) days, or such reasonable time thereafter if such default cannot be cured within thirty (30) days after receipt of notice from LESSEE to remedy the same.
3. Damage to or destruction of all or a material part of the Premises or Airport facilities that renders operation of LESSEE's business non-operative.
4. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict LESSEE from substantially conducting business operations for a period in excess of ninety (90) days.

B. Termination by DISTRICT. This Agreement shall be subject to termination by DISTRICT in the event of any one or more of the following events:

1. The default by LESSEE in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of LESSEE to remedy, or undertake to remedy, to DISTRICT's satisfaction, such default for a period of thirty (30) days after receipt of notice from DISTRICT to remedy the same.
2. LESSEE files a voluntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of LESSEE and such receivership is not vacated within

thirty (30) days after the appointment of such receiver.

3. LESSEE's abandonment of the Premises.

C. Default. The occurrence of any one or more of the following events shall constitute an "Event of default" and breach of this Agreement by LESSEE and District may immediately take all steps to terminate this Agreement:

1. If LESSEE shall make an assignment for the benefit of its creditors; or
2. If any petition shall be filed against LESSEE in any court, whether or not pursuant to any statute of the United States or of any state, of any bankruptcy, reorganization, composition, extension, arrangement, or insolvency proceedings, and LESSEE shall thereafter be adjudicated bankrupt, and if such proceeding shall not be dismissed within thirty (30) days after the institution of the same, except that such time shall be extended while such proceeding is being diligently defended against by LESSEE: or, if any such petition shall be so filed by LESSEE: or
3. If, in any proceeding, a receiver or trustee is appointed for all or any portion of LESSEE's property, and such receiver or trustee shall not be discharged within thirty (30) days after his appointment, except such time shall be extended while such proceeding is being diligently defended against by LESSEE: or
4. If LESSEE shall fail to pay when due any rent due hereunder, and such failure shall continue for ten (10) days after written notice to LESSEE: or
5. If LESSEE shall fail to pay any additional rent or other charge required hereunder, and such failure shall continue for ten (10) days after written notice to LESSEE: or
6. If LESSEE shall fail to perform or observe any other requirement of this Agreement and such failure shall continue for ten (10) days after written notice to LESSEE, except if LESSEE has commenced and is diligently proceeding to cure the same: or
7. The attachment, execution or other judicial seizure of substantially all of LESSEE's assets located at the Premises or of LESSEE's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

If any default by LESSEE shall occur, and following notice of default as required by this Agreement (for the period applicable to the default under the applicable provision of this Agreement), DISTRICT shall have all available rights and remedies provided by law or equity, to which DISTRICT may resort cumulatively or in the alternative.

ARTICLE NINETEEN

LIMITATION OF LIABILITY; RISK OF LOSS

To the extent permitted by law, DISTRICT shall not be liable to the LESSEE or LESSEE's officers, agents, representatives, guests, contractors, subcontractors, or other invitees for any damages or loss caused to them, their property, or LESSEE's personal property by any of the following: water, rain, wind, snow, ice, sleet, hail, fire, storms, earthquake, volcanic eruption, or any other weather event or condition outside of DISTRICT's control; any Airport tenant, user, operator, or any other third party; or by breakage, stoppage, or leakage of utilities on or adjacent to the

Premises. In the event of damage or destruction to the Premises, District is under no obligation to provide substitute rental space to LESSEE.

LESSEE bears all risk of loss or damage to any property stored on the Premises. DISTRICT will not provide insurance for any property stored on the Premises and is not responsible for any damage to or loss of the stored property, whether caused by fire, water, earthquake, liquefaction, theft, terrorism, or any other risk. LESSEE acknowledges that insurance is available from independent insurance companies to protect LESSEE in the event of theft, damage, or destruction of the stored property. LESSEE waives the provisions of California Civil Code Section 1932(2) and California Civil Code Section 1933(4) with respect to any destruction of the Premises.

ARTICLE TWENTY

HOLDOVER

If LESSEE remains in possession of the Premises after the expiration or earlier termination of this Agreement without the prior written consent of DISTRICT, such possession shall be deemed a tenancy at sufferance only, subject to termination by DISTRICT at any time upon written notice to LESSEE. During any such holdover period, LESSEE shall pay to DISTRICT (i) Rent at a rate equal to one hundred fifty percent (150%) of the Rent payable immediately prior to expiration or termination, plus (ii) all additional Rent and other charges required under this Agreement, and (iii) any and all damages sustained by DISTRICT as a result of such holdover, including, without limitation, claims made by succeeding tenants.

No holding over by LESSEE, whether with or without the consent of DISTRICT, shall operate to extend this Agreement, and LESSEE shall remain subject to all terms, covenants, and conditions of this Agreement during such period of occupancy. Acceptance of Rent by DISTRICT during any holdover shall not constitute a renewal of this Agreement or a waiver of DISTRICT's right to recover possession of the Premises or to recover damages for such holdover.

ARTICLE TWENTY-ONE

MISCELLANEOUS PROVISIONS

A. Waiver/Timeliness. No waiver of any term, condition, or covenant of this Agreement shall be presumed or implied. Any such waiver must be expressly made in writing by the party waiving the term, condition, or covenant. The acceptance by DISTRICT from LESSEE of any amount paid for any reason under this Agreement in a sum less than what is actually owing shall not be deemed a compromise, settlement, accord and satisfaction, or other final disposition of the amount owing unless DISTRICT agrees otherwise in writing. The acceptance by DISTRICT from LESSEE of rent shall not constitute a waiver of any prior breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein. Acceptance of rent late or any waiver by DISTRICT of a LESSEE breach is not a waiver of default in a subsequent failure to pay rent on time or a subsequent breach of term, covenant or condition.

B. Invalidity. In the event any covenant, condition or provision herein is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided that the invalidity of such covenant, condition or provision does not materially prejudice either DISTRICT or LESSEE in its respective rights and obligations contained in the valid covenants,

conditions or provisions of this Agreement.

C. Notices. All notices required herein shall be in writing and may be given by personal delivery or by first-class mail, postage prepaid, and addressed to DISTRICT at 10356 Truckee Tahoe Airport Road, Truckee, California 96161, and to LESSEE at: _____ ATTN: _____, with an additional copy sent to: _____ ATTN: _____.

Either party may at any time change its address for such notice by giving written notice of such change to the other party. Any notice provided for herein shall be deemed delivered upon being deposited as aforesaid at any United States Post Office or branch or substation or in any United States mailbox, or at time of personal delivery.

D. Headings. The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.

E. Access by District. LESSEE hereby consents to DISTRICT and its agents entry in the Premises at all reasonable times upon reasonable notice whenever possible (except in the event of an emergency in which case no notice is required) for any appropriate purpose, including, without limitation, the following purposes:

1. To inspect the Premises;
2. To maintain the Airport;
3. To maintain or make such repairs to the Premises as DISTRICT is obligated or may elect to make;
4. To make repairs, alterations or additions to any other portion of the Airport;
5. To post notices of non-responsibility for alterations, additions or repairs;
6. To access any areas reserved to the DISTRICT herein;
7. To show the Premises to prospective purchasers or LESSEES;
8. To determine LESSEE's compliance with the terms of this Agreement.

DISTRICT shall have such right of entry and the right to fulfill the purpose thereof without any rebate of rent to LESSEE for any loss of occupancy or quiet enjoyment of the Premises thereby occasioned.

F. Sale of Premises by District. In the event of any sale or exchange of the Premises by DISTRICT and assignment in connection therewith by DISTRICT of this Agreement, DISTRICT shall be entirely freed and relieved of any liability contained in or derived from this Agreement with respect to any act, occurrence or omission relating to the Premises or to this Agreement occurring after the consummation of such sale or exchange.

G. Maintenance of Airport Facilities. DISTRICT shall maintain all public and common or joint use areas of the Airport including the Air Operations Area, in good repair, and shall make such repairs, replacements or additions thereto as it considers, in its sole discretion, necessary for the safe and efficient operation of the Airport.

H. Aerial Approaches. DISTRICT reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of DISTRICT, would limit the usefulness of the Airport or constitute a hazard to aircraft.

I. Time. Time is of the essence of this Agreement and of each and every one of the provisions herein contained except in respect to delivery of possession of the Premises to LESSEE.

J. Force Majeure. Any prevention, delay or stoppage due to strikes, walkouts, labor disputes, acts of God, 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.

K. Tense, Number and Gender. Each number, tense and gender used in this Agreement shall include any other tense, number or gender where the context and the parties hereto or the context and references therein shall require. If LESSEE shall consist of more than one person, all of the terms, covenants and conditions of this Agreement shall be joint and several as to LESSEE.

L. Exhibits Incorporated. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement by reference as though fully set forth herein, whether or not actually attached.

M. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

N. LESSEE's Authority. If LESSEE is a corporation, limited liability company or limited liability partnership, each individual executing this Agreement on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms.

O. LESSEE's Obligations. If a California corporation, Limited Liability Company or Limited Liability Partnership, LESSEE shall furnish DISTRICT 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 DISTRICT 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 DISTRICT's Lessee/Licensee Information Form and return the same to the DISTRICT.

Q. Governing Law. The construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California.

R. Entire Understanding / Ambiguities. This Agreement contains the entire understanding of the parties. LESSEE, by signing this Agreement, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself. Each of the parties in this Agreement agrees that no other

party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement. The failure or refusal of any party to read the Agreement or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Agreement will be valid unless it is in writing and signed by all parties. Ambiguities in this Agreement, if any, shall not be construed against the drafting party.

S. Attorney's Fees. In the event any litigation or arbitration is commenced regarding this Lease Agreement, the prevailing party in any such action shall be entitled to an award of its Attorney's fees and costs, in addition to any other remedy or relief granted therein.

T. Headings. Headings are inserted in this Lease Agreement for convenience of reference only and shall not be utilized to limit, construe or otherwise interpret this Lease Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

LESSEE:

By _____

Title:

Date _____

By _____

Title:

Date _____

Approved as to form for Lessee:

By _____

Name:

Date _____

DISTRICT:

TRUCKEE TAHOE AIRPORT DISTRICT

By _____

David Diamond
President

Date _____

By _____

Robb Etnyre
General Manager

Date _____

Approved as to form for District:

Joshua Nelson, District Counsel

Date _____

Exhibit A

SAMPLE

Exhibit B

ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION

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

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.¹²
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- 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.¹
- 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.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- 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.¹
- 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.²
- 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

- a. Executive Order 11246 - Equal Employment Opportunity¹
- 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 Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- 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].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 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.¹
- 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.¹
- 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).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- 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.¹²
- 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.¹
- 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

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.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 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.

⁴ 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.

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

⁶ 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.

SAMPLE

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.

- a. 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.

- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. 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.

- i. 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;
 - 2) 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;
 - 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) 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.
- 4) 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.